



INTRA-COMMUNITY TRADE

Viorica IONAȘCU¹, Gheorghe LEPĂDATU²

¹ Faculty of Touristic and Commercial Management, Christian University “Dimitrie Cantemir”, Bucharest, Email: viorica.ionascu56@yahoo.com

² Faculty of Finances, Banks and Accounting, Christian University “Dimitrie Cantemir”, Bucharest, Email: cilezbujor@yahoo.com

Abstract *Free movement of goods is a regime under which goods do not encounter at borders, no hurdle set by the State, regardless of whether they are imported or exported according to article 23 of the EC Treaty, the community is founded upon a Customs Union which shall comprise all trade in goods which involves the prohibition between member States of customs duties on import and export and any charges having equivalent effect, as well as the adoption of a common customs tariff in their relations with third countries. With the abolition of customs duties and charges having equivalent effect and the common customs tariff, the achievement of the single market meant the prohibition, as between Member States, quantitative restrictions and measures having equivalent effect.*

Key words:

Commercial changes, export, import, intra-community trade

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1. General considerations relating to intra-Community trade

The European internal market is characterized, according to the provisions of article. 3 (c) of the EC Treaty by eliminating - between Member States¹ -, of obstacles to the free movement of goods, persons, services and capital.

Understanding the concept of a Customs Union also requires some clarifications regarding the scope of the provisions concerning²:

- a) *Space field.* Free movement of goods within the geographical limits of the Member States exercise their sovereignty. Customs territory is as defined in article. 3 of Community customs code 3, text having descriptive character.
- b) *Material field.* Freedom of intra-Community trade concern all sectors of the economy, whereas, according to article. 23 of the EC Treaty, the customs union shall comprise all trade. The forecasts of the art. 23 shall apply both to Community goods and those which are in free circulation. Some clarifications are necessary in relation to these categories.

According to the The Court of Justice of the European Community, goods means any good transported across a border, for the purpose of commercial transactions.

The principle of free movement applies to goods originating in the Member States (article. 23 line 2 of the EC Treaty). The Treaty do not define these goods. Consequently, we must relate to the legal provisions of private law, which are enshrined the layout review. In

accordance with article. 4 pct. 7 of the Community Customs Code, community goods are:

- goods wholly obtained in the customs territory of the community under the conditions referred to in article. 23, without being used goods imported from countries or territories not included in the customs territory of the community
- goods imported from countries or territories not forming part of the customs territory of the community and which are in free circulation (running free). In accordance with article. 24 of the EC Treaty are considered to be in free circulation in a Member State the goods coming from third countries for which have been fulfilled the import formalities and have been charged customs duties, as well as the charges having equivalent effect payable in that member state, if they have not benefited from the total or partial reimbursement of such charges;
- goods obtained in the customs territory of the community by processing of goods which are in free circulation or of goods produced entirely within the community and of products which are in free circulation.

All other goods are considered to be non-community goods. In order to find their origin, it distinguishes between preferential and non-preferential origin of goods. Non-preferential origin of goods shall be determined according to the art. 23-26 of the Community Customs Code. This is the common law judicial regime.

Preferential origin of goods shall be determined by international treaties concluded by the community with non-Member States or groups of States, unilaterally, by the community in respect of certain States, groups of States or territories (articles. 27 in conjunction with article. 20 par. 3 let. d) and e) from Community Customs Code).

c) *Time field.* Realization of the Customs Union was finalised on 1 July 1968, eighteen months before the deadline of 1 January 1970, as stipulated in the Treaty.

The companies carrying out trade with European Union Member States (intra-Community deliveries or acquisitions) are required to make monthly an Intrastat declaration.

In the case of Romania, the declaration is a statement of the Intrastat³ statistics for exchange of goods between Romania and other member states of the European Union. Flows of goods from other member states of the European Union to the territory of Romania are called introductions and flows of goods leaving the territory of Romania with the destination other member states of the European Union are called dispatches.

The obligation of providing statistical data Intrastat returns to all economic operators who satisfy both of the following conditions:

1. are registered for value added tax (also fiscal identification code);
2. carries out exchanges of goods with other member states of the European Union;
3. the total annual value of trade goods with other EU member states, for each of the two streams, introductions and dispatches, exceeds Intrastat threshold value for each year.

Obligations within the Intrastat system shall be established by the National Institute of Statistics on the ground of Intrastat statistical declarations on the basis of the previous year and to the information in the VAT returns and statements provided by the Ministry of Finance.

The National Institute of statistics does not provide in any way, any statistical information collected under the Intrastat statistical system at the level of the economic operator.

Intrastat statistical declaration shall be sent to economic operators who value the Intrastat threshold value during the year preceding the reference year, or exceeding the reference year, separately for introductions and dispatches of goods. Thus, these economic operators become purveyors of Intrastat statistical information.

For the reference year, the Intrastat statistical information providers are:

- a) economic operators who had the obligation of reporting to Intrastat statistical system for the entire year preceding reference year and that throughout the year preceding the reference have achieved a level of intra-Community supplies over the level of threshold value laid down for Intrastat reference year, separately for each stream; They shall complete and transmit the Intrastat statistical Declarations for the whole reference year.
- b) economic operators who have acquired the obligation of reporting for Intrastat statistical system during the year preceding the reference year, by overcoming the Intrastat thresholds value set for the year preceding the reference, separately for each stream; They shall complete and transmit the Intrastat statistical Declarations for the whole reference year.
- c) traders that exceed the value of the Intrastat thresholds during the reference year, separately for each stream; The obligation of reporting for Intrastat statistical system shall be done in the month in which the cumulative amount of early reference to intra-Community supplies exceeds the Intrastat thresholds value set for reference year, separately on the two streams.

Economic operators have the obligation to transmit data for Intrastat statistical system for introductions and dispatches of goods monthly, always until the end of the reference year in which the threshold value has been exceeded and Intrastat for the next calendar year. After a whole calendar year in which the provider of statistical information has not achieved a level of intra-Community supplies of goods, expressed as cumulative values since the beginning of the calendar year, the upper threshold value for Intrastat introductions and/or shipments, the obligation to report data for Intrastat statistical system is terminated and you will no longer be forwarded to the Intrastat statistical Declarations starting with January of the following year. This will apply in circumstances where the value of the Intrastat threshold is not exceeded again within the next year. Those rules will be applied again, separately for introductions and intra-Community dispatches of goods. Intrastat statistical data should be provided by the National Institute of statistics on a monthly basis, within a period not exceeding 15 calendar days after the end of the reference period.

Statistics on intra-Community trade in goods comprise all movements of goods between the member states of

the European Union, which increases or reduces the stock of material resources of a State. All goods arriving in Romania from other EU Member States or leaving the territory of Romania with the destination other member states of the European Union must be declared in the Intrastat statistical declaration.

Basically, this means that the Intrastat statistical statement should be drawn up for intra-Community introductions and/or dispatches of goods in the following cases:

- a. intra-Community supplies involving transfer of ownership, and are intended for use, consumption, or resale the investment;
- b. movements of goods from a member state of the European Union to another, without transfer of ownership. For example, the transfer of stocks, goods movements before and after processing etc.;
- c. return of property;
- d. specific movements of goods);
- e. financial leasing and operational leasing with a duration of over 2 years.

For the following cases need not be drawn up the statistical Intrastat Declaration:

- a trade in services;
- b goods in simple transit;
- c temporary movements of goods;
- d movements of goods for/after repairs and/or maintenance;
- e the exchange of goods with those territories of the member states of the European Union which do not belong to the statistical territory of the member states of the European Union;
- f. exchanges of goods in triangular trade, where goods do not fall within the national territory of Romania from other EU member states or of Romania are not dispatched to another member state of the European Union.

If Intrastat statistical statement follows the physical movement of goods, financial VIES VAT statement will follow the flow of bills and financial.

Computer system VIES (VAT Information Exchange System), which became operational on 1 January 2007 in our country also, ensures the exchange of information with member states of the European Union concerning value added tax. The system has an online database that includes all VAT payers in the European Union, allowing verification of the validity of the identification data of the persons liable for payment of the other EU member states.

Every taxable person shall draw up and submit to the competent tax authorities, not later than the 25th of the month following the calendar quarter, a summary

statement regarding intra-Community supplies, according to the model established by the Ministry of Public Finances, which will contain the following information:

- a) the total amount of intra-Community supplies of goods exempt from payment of the levy on each customer, for which the charging of tax was incurred in the calendar quarter concerned;
- b) Total amount of the supplies of goods carried out within the framework of a triangular operations carried out in the Member State of arrival of the goods dispatched or transported, on each beneficiary of subsequent delivery which has appointed a code T, and for which the chargeability of the tax was born in calendar quarter in question.

Every taxable person registered for the purposes of value added tax, must submit to competent fiscal authorities, not later than the 25th of the month following including a calendar quarter, a declaration statement concerning intra-Community acquisitions, conforming to the model set out by the Finance Ministry, which will include the following information:

- a) the total amount of intra-Community acquisitions of goods on each supplier, for which the taxable person shall be liable to pay the tax and the chargeability of the tax which has occurred in calendar quarter in question;
- b) the total amount of purchases of goods carried out within the framework of a triangular operations, for which the supplier has designated beneficiary taxable person as the person liable to pay the tax.

Taxable persons registered for the purposes of value added tax shall submit recapitulative statement only in the second quarter of reporting in which shall arise chargeability of the tax for deliveries/intra-Community acquisitions of goods, as well as for supplies and purchases of goods in the framework of a triangular operations carried out.

In corrective statement VIES 390 shall be corrected transactions declared in any previous reporting period and shall complete all the sections form with the data valid at the time being declared, regardless of whether they have been declaring a Rectifying Statement for each reporting period for which operating adjustments.

Corrective statement shall be used for the reduction of the tax base of the intra-Community acquisitions in the situation referred to by the law. The price reductions granted at a later stage by the supplier, in another quarter than the one in which they were carried out deliveries of goods must be declared in the recapitulative statement drawn up for the quarter in which the

price reductions were granted, whether it's in that quarter the amount of discounts exceeds the total deliveries/purchases of goods declared, leading to a negative amount.

INTRA-Community transactions are subject to VAT taxation system by inverse between the two economic entities involved, from two different Member States, depending on the response to the following five questions:

- a) is the operation carried out by a taxable person?
- b) operation is within the scope of VAT?
- c) Where is the place of purchase?
- d) operation is considered exempt from VAT?
- e) which is the person liable to pay VAT?

Reverse Taxation consists in transferring to an obligation for the payment of value added tax from the supplier to the customer. Thus, reverse taxation applicable to the country of destination, the customer to record VAT so that the tax deductible, and that the duty collecting.

This mechanism of a heavy taxation inverse is brief, simple, easy-to-apply and advantageous from the point of view of cash flow⁴

2. The accounting of the intra-Community deliveries

According to intra-Community supplies Fiscal Code, intra-Community supply is a supply of goods which are dispatched or transported from one Member State to another Member State by the supplier or by the person to whom delivery is made or by another person in their account.

Delivery shall be treated with intra-Community payment transfer by a taxable person of goods from economic activity in Romania in a different Member State. Transfer means dispatch or transport any goods in Romania to another Member State, by the taxable person or by another person on his own account, to be used for the purpose of conducting economic activity.

Shall be deemed to be the place of delivery of goods⁵ :

- where property is situated at the time when you start dispatch or transport, in the case where the goods are dispatched or transported by the supplier, by the purchaser or a third party. If the place of delivery is outside Community territory, the place of delivery made by the importer and the place any subsequent supplies shall be deemed in the Member State of import of the goods, the goods shall be deemed to be transported or dispatched from the Member State of importation;
- place installation, or installation, by the supplier or by another person on behalf of the supplier, in the case of goods which are the subject of a installation or a montage;

- Where property is situated when they are made available to the purchaser, in the case where the goods are not dispatched or transported;
- place of departure of the transport of passengers, in the event that supplies of goods are carried out on board a ship, plane or train, in the case of the part of the transport of passengers carried out within the territory of the Community if:
 1. The transport of passengers carried out within the territory of the Community shall be the part transport, carried out without any halt outside the Community, between the place of departure and the place of arrival of passenger transport;
 2. place of departure of the transport of passengers shall mean the first point of passenger boarding within the Community, possibly after a stoppage outside the Community;
 3. place of arrival of the transport of passengers shall mean the last point of disembarkation foreseen within the Community for passengers who embarked in the Community, possibly before a stop outside the Community etc;
- In the case of a sale at a distance which is carried out from a Member State toward Romania, the place of delivery shall be considered in Romania where the delivery is carried out by a buyer taxable person or non-taxable legal person benefiting from the derogation from Article 126 (4)⁶ , or by any other non-taxable person and if the following conditions are met:
 - the amount of the sales for distance whose transport or dispatch in Romania shall be carried out by a supplier, in the calendar year in which it is to be a certain distance selling, including the value of such sales from a distance, or in the previous calendar year, exceed the ceiling for sales at a distance of 35,000 euros, whose equivalent in lei shall be determined by the rules; or
 - the supplier has chosen in the Member State in which it is transported goods for considering its sales at a distance, which can involve carriage of goods in that Member State in Romania as well as having taken place in Romania.
- Place of delivery for remote sales carried out in Romania by another Member State shall be considered, for the former Member State, where the delivery is carried out by a person who does not communicate to supplier a registration code

for the purposes of value added tax, allocated by the Member State in which transport or dispatch, if the following conditions are met:

- the amount of the sales from a distance, carried out by the supplier and involving transport or consignment of the goods in Romania by a given Member State, in the calendar year in which it is to be a certain distance selling, including the value of such sales from a distance, or in the previous calendar year, exceed the ceiling for sales at a distance, to be established under the law on value added tax in the Member State concerned, such sales taking place of delivery in the State in question; or
- the supplier has opted in Romania to consider all its sales at a distance, which can involve carriage of goods in Romania in a given Member State, as well as having taken place in that other Member State. The option shall be exercised in accordance with the conditions laid down by the rules and shall apply to all sales from a distance, carried out by the Member State concerned, in the calendar year in which they exercise the option and in the next two calendar years.

Shall be exempt from value-added tax:

- intra-Community supplies of goods by a person who shall communicate a supplier code valid for registration for the purposes of value added tax, assigned by the tax authorities of another Member State, with the exception of:
 - intra-Community deliveries carried out by a small business other than intra-Community supplies of new means of transport;
 - intra-Community supplies which have been subject to special arrangements for goods second-hand goods, works of art, collectors' items and antiques;
- intra-Community supplies of new means of transport by a buyer does not communicate to supplier a code valid for registration for the purposes of VAT; etc.

3. INTRA-Community acquisitions accounting

According to The Fiscal Code, shall be considered as intra-Community acquisition of goods entitlement to have available, as an owner, of goods dispatched or transported to the destination indicated by the buyer, by the supplier, by the buyer or by another person on behalf of supplier or buyer, by a Member State other

than that of departure of the dispatch or transport of the goods.

Shall be treated as an intra-Community acquisitions with payment:

- (A) use in Romania, by a taxable person, for the purpose of completing its economic activity, of goods transported or dispatched by him, or by another person, in the name of the Member State in whose territory the goods have been produced, extracted, purchased, acquired or imported by it, for the purpose of conducting their own economic activity, if the shipment or dispatch of these goods, in the case in which would have been carried out in Romania, in another Member State, it would have been treated as transfer of goods in another Member State;
- (B) the intra-Community acquisition of goods of which the supply, if it had been carried out in Romania, would have been treated as a supply of goods carried out with payment;
- (C) the purchase by a non-taxable legal person of goods imported by that person in the Community and transported or dispatched in a Member State other than that in which it has been imported non-taxable legal person will be eligible for refund of the tax paid in Romania for the importation of goods, if it proves that intra-Community acquisition has been subject to tax in the Member State of destination of the goods dispatched or transported; etc.

Place of the intra-Community acquisition:

- shall be deemed to be the place where property is situated at the time when the dispatch or transport of the goods ends;
- if intra-Community acquisition of goods, provided for in Article 126 (3) (a)⁷, and if the purchaser shall notify supplier a registration code for the purposes of VAT valid, issued by the authorities of a Member State other than that of intra-Community acquisition, the place of such intra-Community acquisitions shall be considered in the Member State which issued the registration code for the purposes of VAT;
- intra-Community acquisition has been subject to the payment of the tax in both Member States, VAT shall be reduced accordingly in the Member State which has given VAT code;
- If intra-Community acquisition of goods carried out within the framework of a triangular operations in a Member State other than Romania, by the purchaser reseller registered

for the purposes of value added tax in Romania, in accordance with Article 153 Fiscal Code, shall be deemed to have been subject to the payment of the tax on the value added tax in that other Member State, where the following conditions are met:

- the buyer reseller registered for the purposes of value added tax in Romania to provide proof that it has carried out intra-Community acquisition for the purpose of carrying out a subsequent supplies in that other Member State, delivery for which the beneficiary that is registered for the purposes of value added tax in the Member State in question has been designated as the person liable for payment of the tax;
- the obligations concerning the declaration these operations, laid down by the rules and have been fulfilled by the buyer reseller registered for the purposes of value added tax in Romania in accordance with Article 153 Fiscal Code.

In the case of intra-Community acquisitions of goods, the chargeable event occurs on the date on which they intervene the obligating event for supplies of similar goods, in the Member State in which the acquisition. Charging the tax is involved in the 15th day of the month following that in which the chargeable event. By way of exception, chargeability of the tax comes into effect on the date of invoice provided for in legislation of another Member State, if it is issued before the 15th day of the month following that in which the chargeable event.

4. Conclusions

The tax base includes excise duty paid or payable in a Member State other than the person effecting the intra-Community acquisition, in respect of goods purchased in the case in which the excise duties shall be reimbursed person effecting the intra-Community acquisition in the Member State from which the dispatch or transport of the goods, the basis for the taxation of intra-Community acquisition in Romania shall be reduced accordingly.

Are exempted from value added tax:

- (a) the intra-Community acquisition of goods of which the supply in Romania is in any situation tax-exempted within the country;
- (b) the intra-Community acquisition of goods the importation of which in Romania is in any situation be exempt from tax;

- (c) the intra-Community acquisition of goods for which the person who buy goods in any situation would be entitled to full reimbursement of the tax that would be due if the purchase would not be exempt.

Rate applicable to intra-Community acquisitions of goods shall be the rate applied on the territory of Romania for same good delivery and which is in force on the date on which the intervener chargeability of value added tax.

Romanian legal entities which carry out an intra-Community acquisition have the following obligations:

- shall communicate to the registration code for the purposes of value added tax, a situation in which the supplier will invoice without VAT;
- supplier pay VAT in Romania, by applying inverse taxation;
- enter the VAT in Romanian invoice received from the supplier in another Member State.

By the accession to the European Union, Romania to benefit same obligations and rights as in the case of all Member States. For the completion of the transition period necessary to the accession, shall require the application and compliance with all specific mechanisms principles European market. In these conditions are necessary deep structural changes, overview, organization and functioning mechanisms economic, social and legislative - after European models.

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*** Councilman Import-Export, Rentrop & Straton

*** Customs Code

*** International Financial Reporting Standards (IFRSsTM), including International Accounting Standards (IASsTM) and their Interpretations from 1 January 2013, Publishing house CECCAR, 2013

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¹ Member State and the territory of a Member State shall mean the territory of each Member State of the community covered by the Treaty establishing the European Community (C.(E).)

² Deleanu, S., „Community business law”, Babes-Bolyai University, Cluj-Napoca, pag. 13-15

³ National Institute of Statistics has issued Order No 684 of 28/11/2008 laying down detailed rules for filling in the Intrastate statistical declaration (published in M. O. no. 839 of 12/12/ 2008)

⁴ Cernusca, L. , "Purchases and intra-Community supplies", Mmagazine "Management and accounting firm", No 8/2007, p. 25

⁵ The Fiscal Code

⁶ Are not to be regarded as taxable transactions in Romania intra-Community acquisitions of goods which satisfy the following conditions: (a) shall be carried out by a taxable person who carries out only supplies of goods or of services for which tax is not deductible or a non-taxable legal person; and (b) the total amount of these intra-Community acquisitions does not exceed during current calendar year or has not exceeded during the previous calendar year the ceiling of 10,000 Euros, whose equivalent in lei is determined by rules

⁷ It is an taxable operation and following operations carried out with the payment, where the place is considered to be in Romania:an intra-Community acquisition of goods other than new means of transport or products accizable, carried out by a taxable person acting as such or a non-taxable legal person, which do not benefit from the exemption, which is the result of intra-Community supplies carried out abroad by a taxable person acting as such aand that is not considered small enterprise in its Member State, and which does not apply the provisions of Article 132 (4) (1) (b) in respect of the supplies of goods which are the subject of a installation or a fitting or of Article 132 (4) 2) with regard to the sales at a distance.

By way of derogation, are not to be regarded as taxable transactions in Romania intra-Community acquisitions of goods which satisfy the following conditions: (a) shall be carried out by a taxable person who carries out only supplies of goods or of services for which tax is not deductible or a non-taxable legal person; (b) the total amount of these intra-Community acquisitions does not exceed during current calendar year or has not exceeded during the previous calendar year the ceiling of 10,000 euro, whose equivalent in lei is established by the rules.