

## THE VALUE ADDED TAX REGIME FOR THE ASSETS BELONGING TO

### NATURAL PERSONS WHO ESTABLISH THEIR DOMICILE OR RESIDENCE IN ROMANIA

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**Abstract:** Until the Romania's accession date to the European Union, to the assets belonging to the natural persons changing their domicile or residence from another country in Romania, it was applied the same regime on the value added tax, respectively there were exempted within certain limits and conditions established by judgments or orders from the government. After the accession date to the European Union, for the natural persons from "third countries", exemption regime is sufficiently clear regulated by an order of the Ministry of Public Finances. Quite complex and controversial issues, which we shall try to clarify further, arise for the natural persons from the member states of the European Union.

**Key words:** import, intra-community acquisition, person assets, value added tax.

#### 1. INTRODUCTION

Since Romania's accession to the European Union, the goods entering the country are applied a different tax treatment in terms of the value added tax, depending on the place of origin of the goods, being treated as an import of goods, namely an intra-community acquisition of goods or transactions assimilated to it.

In terms of the value added tax, the natural persons who bring any kind of assets to Romania from any country or territory for which it does not apply the Treaty Establishing the European Community, called third countries, or from third territories which are part of the customs territory of the European Community, but are excluded from the community territory in terms of VAT, make an import of goods for which they are required to pay the tax, if the goods are subject to taxation.

The goods brought to Romania by these persons represent a definitive import of goods, being exempted from the VAT, those which meet the conditions provisioned in the EU directives. By the methodological norms, the Ministry of Public Finance has established the goods subject to exemption, the conditions that must be met and the documents to be submitted to the customs authorities to receive the exemption right.

In the category of the goods exempted from VAT, according to the norms, enter the goods for personal or household needs: household effects, bicycles and motorcycles, private vehicles and their trailers, camping caravans, pleasure boats and airplanes.

There are considered personal goods also the household supplies adequate to the normal requirements of a family, pets and riding animals, portable instruments for applied arts or liberal arts necessary for the person hereof in order to perform his activity or profession. The household effects mean the personal effects, linen and furnishings or equipment used in the household, for personal or household needs. The personal goods should not allow, by their nature or quantity, the performance of a commercial activity.

## 2. IMPORT OF PERSONAL GOODS OF THE PERSONS COMING FROM THIRD COUNTRIES

The personal goods brought by the natural persons changing their domicile or residence, where appropriate, from a third country in Romania are exempted from VAT.

The exemption is limited to the personal goods that were owned and, for the unused goods, there were used by the respective person at the previous domicile or residence at least a period of 6 months before the date on which he ceased to be domiciled or resident in the third country of origin, and to the new domicile or residence the same destinations are affected. The exemption may be also granted for the personal goods permanently imported before determining the domicile or residence in Romania, based on the written commitment on the intention of the person concerned to actually establish in a period of 6 months in Romania. In this case, the person concerned must submit a security established by the customs authorities. The period of 6 months of ownership or possession of the goods in the third country is calculated from the date of importing the personal goods in Romania. Only the persons who had the domicile or residence in a third country for at least 12 consecutive months may be exempted from paying the VAT.

There are not exempted from paying the VAT the alcoholic products, tobacco or tobacco products, vehicles used for commercial purposes, items used in carrying out the activity or profession, others than the portable instruments used in liberal and applied arts.

In order to receive the exemption, the personal goods must be brought to Romania within a period not exceeding 12 months after establishing the domicile or residence. The goods can be brought several times within this period.

The personal goods allowed for exemption can not be the subject of a loan, real estate bond, rental or assignment for good and valuable consideration or free of charge without the customs authorities to be informed, for 12 months since the final import declaration. Otherwise, the personal goods brought in the country are taxed, the applicable rate being that in force on the date of changing the destination which applies to the customs value accepted by the customs authorities at the time of the import declaration.

The persons changing their domicile or residence from a third country in Romania due to their marriage, receive the exemption from paying the VAT for the import of the bridal and household effects, whether they are new or not.

There are exempted from paying the VAT also the gifts that are usually offered on the occasion of the marriage by the persons domiciled or resident in a third country. The value of each gift allowed for exemption may not exceed 1,000 euros.

The exemption from paying the VAT shall be granted only to the persons who provide proof of their marriage and had their domicile or residence in the respective country for at least 12 consecutive months.

In order to receive the exemption, the goods must be brought to Romania within 4 months since the date of the marriage. The exemption may be also granted at the most two

months before the date set for marriage, upon an appropriate bond established by the customs authorities.

The provisions on the loan, pledge / real estate bond, rental or assignment for good and valuable consideration or free of charge are also applied to the goods imported on the occasion of the marriage.

There are exempted from paying the value added tax on the import of the personal goods acquired by inheritance by a natural person domiciled or residing in Romania.

The exemption is granted only for the personal goods permanently imported within at the most 2 years since the date when the person becomes the owner of those goods, and bringing the goods can be made several times within this period.

The exemption is not granted for the following: alcoholic products, tobacco or tobacco products, vehicles used for commercial purposes, items used in carrying out the activity or profession, others than the portable instruments used in liberal and applied arts, which were also required to carry out the activity or profession by the deceased, stocks of raw materials and finished or semi-finished products, live cattle and supplied of agricultural products in quantities exceeding the normal supply requirements of a family.

Hereinafter, we will try to prove that for the goods belonging to the natural persons changing their domicile or residence from another Member State in Romania, the value added tax is not due in any situation and no matter the kind of the goods.

In our approach we will examine, first, whether these transactions fall within the scope of application of the value added tax.

Under the legal provisions, in terms of natural persons, the following intra-community acquisitions are taxable transactions:

1. an intra-community acquisition of goods, others than the new means of transport or excise goods, made by a taxable person acting as such, following an intra-community delivery made outside Romania;
2. an intra-community acquisition of new means of transport, made by any person;
3. an intra-community acquisition of excise goods, made by a taxable person.

The taxable person is any person who develops, in an independent manner and irrespective of the place, economic activities whatever the purpose or result of this activity. The economic activities include the activities of producers, traders or service providers, including the mining activities, agricultural and the activities of liberal professions or assimilated to them. Moreover, the economic activity is the exploitation of the tangible or intangible assets in order to obtain continuing incomes. Of these provisions it results that the natural persons who do not develop activities such as the ones listed above should only pay the VAT for the intra-community acquisitions of new means of transport.

According to the definition of the Tax Code, the intra-community acquisition of goods is "getting the right to dispose, as an owner, of movable tangible assets dispatched or transported to the destination indicated by the buyer, by the supplier, by the buyer or another person, in the account of the supplier or the buyer, to a Member State, other than the one from where the transport or shipment of the goods was made". So, if in Romania it would be made an intra-community acquisition, which would mean that in the state from which the goods come to have had an intra-community delivery of goods. Or, "the intra-community delivery represents a delivery of goods, ..., which are dispatched or transported from one Member State to another Member State by the supplier or the person to whom the delivery is made or by another person on their behalf." It results that the personal goods brought to Romania by the persons changing their domicile/residence in the Community do not represent an intra-community acquisition, as when acquiring the ownership right

upon the goods it wasn't made an intra-community delivery, but a local delivery, respectively a local import.

Bringing the personal goods in Romania by these persons can not be treated as a transaction assimilated to the intra-community acquisitions, as it is not made by a taxable person with the purpose of developing an own economic activity, as required by law.

The last argument we bring in supporting the fact that there should not be taxed the personal goods brought in Romania by the persons changing their domicile or residence from another Member State is connected with the moment when the generating event should take place and the exigibility for intra-community acquisitions of goods.

Under the legal provisions, the generating event occurs on the date when it would occur the generating event for similar deliveries of goods, in the Member State in which the acquisition is made, and the exigibility of the tax occurs in the 15<sup>th</sup> day of the month following that in which the generating event occurred. If the invoice is issued before the 15<sup>th</sup> day of the month following that in which the generating event occurred, the exigibility of the tax occurs on the date of issuing the invoice.

Considering that the generating event for deliveries of goods occurs on the date of delivering the goods, it results that the generating event for intra-community acquisitions of goods also occurs on the date of delivering the goods from the Member State.

Since the personal goods of the natural persons were subject to the tax rules in the Member State where they were acquired or purchased, the generating event and exigibility do not occur when bringing them in Romania.

### 3. CONCLUSIONS

The goods belonging to the natural persons changing their domicile or residence in Romania are subject to a different tax treatment in terms of VAT depending on the country from which they originate. The natural persons coming from third countries are exempted from the value added tax for certain goods and under certain conditions, while the persons coming from the Member States, in our view, are exempted from paying the tax for all the personal goods brought in Romania on the occasion of changing the domicile or residence.

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