

## FISCAL APPROACHES REGARDING VAT CORRESPONDING TO THE REPAIR WORKS OF MOVABLE TANGIBLE ASSETS

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### ABSTRACT

VAT issue regarding the repair works aims at the reasoning that taxpayers are called to carry out in order to legally establish their respective obligations. Thus, the tax regime applicable to current repairs is aimed at the answer to the following questions: (i) What is the quality of people who benefit from these services?; (ii) What is the nature of the operation?; (iii) Which is the place of taxation?; (iv) What is the date on which the generating fact and VAT chargeability take place?; (v) Which is the taxable basis / exchange rate used?; (vi) Which is the VAT rate?; (vii) Who is the person liable to pay VAT?; (viii) What are the declarative obligations of the parties involved in the transaction? In case of repairs performed outside Romania is important to establish the applicable tax legislation (*the national legislation vs. fiscal legislation of the State in which the repair work takes place*). This article presents some situations that, on first examination, resemble each other, but which lead to different fiscal treatments (*depending on the status of the beneficiaries and the purpose for which these types of services were rendered*).

**Key words:** fiscality, accounting information, VAT, intra-community services, place of provision of services.

**JEL Classification:** H32, L20, L21, M41, Q28

### I. Introduction

The article examines the repair works performed on movable tangible assets which do not become imovable by destination. Our approach endorsed two opposite directions, as follows:

(i) in the first phase we analyzed the aspects of the repair works made in Romania, considering the quality of the recipient (individual, taxable person established in another Member State of the EU and taxable person from a third country and not established in the EU );

(ii) in the second stage we analyzed several cases related to repair works performed in other EU Member States to beneficiaries in Romania.

The provision of intra-community services whether we receive or we provide them must be thoroughly analyzed from a VAT perspective so as to establish their exact place of provision, who is the person liable to pay the tax, the provider or recipient.

In terms of place of supply there are two general rules depending on the type of the person receiving the services. Thus, if the person receiving the services is a taxable person, the place of supply is the place where the taxable person receiving the service is established. If the person receiving the services is a non-taxable person the place of provision of services is the place where the provider has its place of business. However, there are exceptions that apply before general rules.

## II. Fiscal treatment of the repair works carried out in Romania

According to Article 129 paragraph (1) of the Fiscal Code a provision of services is considered any operation that is not supply of goods, as defined in Article 128.

*The place of supply of services differs* depending on the status of the beneficiary, as follows:

- If the beneficiary is a natural person, the repair is taxable in **Romania**, the place where the provider operates, based on Article 133 paragraph (3) of the Fiscal Code: *The place of performance of services by a non-taxable person is the place where the provider has established its business;*

- If the recipient is a taxable person registered for VAT purposes in another EU Member State, the repair is not taxable in Romania, so it is **taxable in the EU Member State** where the actual beneficiary of the repair works is established, within the limits and conditions set out in Article 133 paragraph (2) in conjunction with section 13 of the of the Methodological Norms. Pay attention to compliance with proof that the recipient is taxable person established in the Community (section 13 paragraphs (7) and (9) of the Norms). Pay attention to demonstrate that the repair works are not performed for customer employees' personal use but are performed solely for the benefit of this customer located in another EU Member State (section 13 paragraph (10) of the Norms [..] "*When the service is used by the recipient in whole for personal use or for the personal use of the taxable person's employees, the supply of that service shall be treated as being made in relation to a non-taxable person [...]* ").

- If the recipient is a taxable person from a third country (not established in the EU) in **Romania** the repair is taxable, the place where the actual repair takes place, based on Article 133 paragraph (7) letter a) of the Fiscal Code: *Notwithstanding the provisions of paragraph (2) the place of the following services is considered to be: in Romania, for services consisting in activities ancillary to transport, such as loading, unloading, handling and related services, services consisting in works on movable tangible property and valuation of movable tangible property, services of transport of goods in Romania, when these services are provided by a taxable person not established within the Community, if the effective use and exploitation of the services take place in Romania.*

The *generating event* occurs on the date of the provision of the services, according to Article 134, index 1 paragraph (1) of the Fiscal Code. As a general rule, *tax chargeability* occurs at the date of the *generating fact*, according to Article 134, index 2 paragraph (1) of the Fiscal Code. However, it can intervene before the date of the generating fact as provided expressly in Article 134<sup>2</sup>, paragraph (2) of the Fiscal Code, such as: invoice date or receipt of advance.

The *tax base includes* consideration obtained or to be obtained by the supplier from the customer, according to Article 137 paragraph (1) letter a) of the Fiscal Code. The tax base does not contain the elements provided in Article 137 paragraph (3) of the Fiscal Code such as discounts, damages, penalties, delay interests etc.

If the elements used to determine the taxable basis are expressed in foreign currency, then one will use the last exchange rate published by NBR or the ECB or the exchange rate of the commercial bank through which the settlement is effected as of the date when the tax

becomes chargeable, under the terms of Article 139, index 1 paragraph (2) of the Fiscal Code in conjunction with the provisions of section 22 of the Methodological Norms.

For situations where repair is taxable in Romania, the rate of VAT is 24%, as determined at Article 140 a) of the Fiscal Code.

Also, if the place of taxation is Romania, the Romanian provider is the one who is liable to pay VAT under Article 150 paragraph (1) letter a) of the Fiscal Code and the invoice necessarily contains the information specified in Article 155 paragraph (19) of the Fiscal Code.

In terms of declarative obligations, the operation is declared in the sales register by the provider, in the form 300 VAT return as domestic transaction (the operations which have the place of taxation in Romania) or as tax-free transaction (for those repairs made to beneficiaries taxable persons established in another EU Member State, in which case the statement in Form 390 VIES must be made, as intra-Community supply of services).

In chapter 5.2. of the Handbook for providers of Intrastat statistical information - Part I - "Exchange of goods excluded from Intrastat system" they considered movements of goods excluded from Intrastat reporting the *"repairs (goods shipped / introduced from from / in Romania in / from a EU Member State for repair and goods introduced / sent to / from Romania after repair and replacement parts that are incorporated into the repair)." Therefore, repairs on goods and services provided shall not be declared in Intrastat form.*

### **III. The tax treatment of repairs performed outside Romania**

We will analyze the situation of the entity ABC SRL, with tax domicile in Romania and registered in the Register of Intra-Community Operators. It owns as fixed assets a truck and a car. As a main object of activity, the company provides freight transportation services. The fiscal period of declaration and payment of VAT is the calendar month.

On April 18<sup>th</sup> "N" company ABC SRL receives an order of cargo on the route Bucharest (Romania) - Madrid (Spain). On April 20<sup>th</sup> "N" truck has technical problems in Paris (France) and enters into service where it is repaired for two days. On April 22<sup>nd</sup> "N" service in France, "PARISIAN SERVICE", registered for VAT purposes in France and registered in the Register of Intra-Community Operators, issues a service invoice in the amount of 1,500 Euro and VAT zero noting Chargeback. While the truck is in service in France, the administrator of ABC SRL decides to go by car to the service where the truck is to pay the invoice for service but the car crashes and he reaches a service in Berlin (Germany). On April 23<sup>rd</sup> "N" German provider, registered in the Register of Intra-Community Operators, issued a service invoice in the amount of 500 Euro, VAT 19%.

At first glance, the administrator considered it abnormal for the same transaction (car repair work) have two different treatments (non-taxable in France and taxable in Germany) considering that the service in Germany delivered the invoice in an incorrect manner.

However, in both transactions both providers, both the French and the German ones issued the invoices correctly, as shown in the analysis of each situation.

#### *3.1) fiscal treatment adopted in France*

In terms of VAT, **the place of supply is in Romania**, the place where the person receiving the services is located under Article 133 paragraph (2) Fiscal Code and Article 44 of Directive 2006/112 / EC, as both the French provider and the Romanian recipient are registered for VAT purposes in their countries and in the Register of Intra-Community Operators.

Article 44 of Directive 2006/112 / EC: *"The place of supply of services to a taxable person acting as such is the place where that person has established his business. However, if those services are provided to a fixed commercial establishment of the taxable person located in a place other than his business, the place of performance is the place where that fixed establishment is located. In the absence of such a place or fixed establishment, the place of performance is the place where the taxable person who receives such services has his permanent address or usual residence"*.

In this case, the person liable to pay the tax is the person who is the beneficiary of the services received, according to Article 150 paragraph (2) Fiscal Code and Article 196 Directive 2006/112 / EC:

- Article 150, paragraph (2) of the internal legislation: *Tax is payable by any taxable person, including by the non-taxable legal person registered for VAT purposes according to Article 153 or 153<sup>1</sup>, which is the beneficiary of the services with the place of supply in Romania according to Article 133 paragraph (2) that are provided by a taxable person who is not established in Romania or is not deemed to be established for those provisions of services in Romania according to Article 125<sup>1</sup> paragraph (2) even if registered in Romania according to Article 153 paragraph (4) or (5) "*;

- Article 196 of Directive 2006/112/EC: *"VAT is payable by any taxable or non-taxable legal person registered for VAT purposes to whom the services provided under Article 44 are provided, when the services are provided by a taxable person who is not established the Member State concerned. "*

The operation will be declared in VAT Return (Statement 300) both as a deductible tax (line 20 and line 20.1), as well as collected tax (line 7 and line 7.1) and in VIES recapitulative statement (form 390). From an accounting perspective, recordings from the recipient will be:

- *services received:*

<b>611</b>	=	<b>401</b>	6,750 lei
"Maintainance and repair costs"		"Suppliers"	

- *reverse charge:*

<b>4426</b>	=	<b>4427</b>	1,080 lei
"Input VAT"		„Output VAT"	

### 3.2) the fiscal treatment adopted in Germany

From a VAT perspective, we would be tempted to apply the general rule of Article 133, paragraph (2) Fiscal Code and Article 44 Directive 2006/112/ EC. However, given the applicable tax legislation in Germany and considering the provisions of Article 19 of Regulation 282/2011 implementing Directive 2006/112 / EC (*"in order to implement the rules governing the place of supply of services under Articles 44 and 45 of Directive 2006/112/EC, a taxable person, or a non-taxable legal taxable person, who receives services exclusively for private use, including for the use by his staff, is considered a non-taxable person"*), we find that the German provider did not consider that the car used by the administrator ABC SRL is used exclusively for economic but for personal purposes, and therefore it considered the Romanian recipient as non-taxable person. As a consequence, it was considered that the place of supply of service is the place where the provider established his business, namely in Germany, under Article equivalent to Article 133, paragraph (3) of the Fiscal Code and Article 45 of Directive 2006/112/EC. In this case, the person liable to pay the tax is the German provider, according to Article 193 of Directive 2006/112/EC: *"VAT is payable by any*

person making a taxable supply of goods or provision of services, unless it is payable by another person in accordance with Art. 194-199 and Art 202."

The operation will only be declared only in VAT Return (Statement 300) in line 26 and 26.1 as tax exempt or taxable acquisition but will not be declared in the recapitulative VAT (form 390). The beneficiary from Romania may yet recover the tax paid in Germany by statement 318.

a) VAT registration in a receivable account against the German state:

<b>%</b>	=	<b>401</b>	<u>3,106 lei</u>
<b>611</b>		"Suppliers"	2,678 lei
"Maintainance and repair costs"			
<b>461</b>			
"Sundry debtors"			428 lei

b) effective recovery of VAT in Germany:

<b>5124</b>	=	<b>461</b>	428 lei
"Cash at bank in foreign currencies"		"Sundry debtors"	

#### IV. Conclusions

The fiscal approach highlighted the impact that tax legislation can have on running the operations relating to repair of movable tangible assets that do not become immovable by destination. It is obvious that the design and implementation of VAT in an entity should be performed only by specialists who know and correctly implement tax legislation in the matter. Misinterpretation can lead to debts and accessories in case of VAT payment set by the control body after the audit. An efficient management of the entity must be able to design and implement an own fiscal policy that combines harmoniously all elements related to obtaining all the benefits offered by fiscal optimization with those related to strictly ensure security in terms of taxation. Based on these considerations, it is imperative that in the present and future performance evaluation for the management to take account any fiscal costs while developing appropriate development solutions corresponding to the opportunities that arise in the field.

In the first part we emphasize the fundamental aspects to be considered when designing and implementing VAT on repair works carried out in Romania, to various beneficiaries.

Regarding the fiscal treatments adopted by the entity as beneficiary of repair works taking place actually in another EU member state, we observed that the fiscal treatment may differ depending on the destination of the good repaired: for an economic purpose or for the personal purpose of the taxpayer' staff.

#### REFERENCES

- [1] Directive 112/2006 / EC on the common system of value added tax;
- [2] Law no. 571/2003 on the Tax Code, Including Subsequent Amendments and additions;
- [3] Government Resolution no. 44 of January the 2nd, 2004 for approving the methodological guidelines of enforcing Law no. 571/2003 on the Tax Code, Including Subsequent Amendments and additions;
- [4] [www.infofisc.ro](http://www.infofisc.ro).