Fiscal Approach of Triangular Operations

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Abstract. Chain transactions represent a successive array of sale-purchase operations. They imply the participation of at least three parties, in the situation where the operated goods are being transported directly from the initial supplier to their final beneficiary, regardless of the number of buyers-re-sellers they go through. So, although the goods are submitted to a single transport operation, fiscally each sale-purchase transaction is evaluated individually just like a separate goods delivery. Triangular operations represent an exceptional case of such chain transactions. Usually, triangular operations suppose there is a series of transactions between three or more legal persons, located and Value Added Tax (VAT) registered in different EU countries. If in records, the goods pass from one partner to the other, physically they go directly from the supplier to the final beneficiary. The specificity of these operations consists in the fact that the goods are registered only in the accounting records of the buyer-re-seller. The actual taking delivery of goods is impossible. In the case where all involved parties are VAT registered, it is possible and recommended to apply simplification methods (payment on delivery) only if the goods’ transportation is the supplier’s or the buyer-re-seller’s charge. Otherwise, for an Ex works contract, the goods being available to the buyer in the departure country, they need to be VAT registered in that country, being later on physically delivered to the final beneficiary.

Keywords: Value Added Tax, suppliers, operations, methods, country

INTRODUCTION

An evolving type of business is to buy merchandises in order to re-sell them to economic operators form different countries. According to the Fiscal Code, this type of transactions is known as triangular operations (Feleaga and Feleaga, 2007). There may be: a) “Classical” or “proper” triangular operations, where three companies Value Added Tax (VAT) registered in three member countries are involved; b) “Apparent” triangular operation – involving the participation of two companies VAT registered in two member countries and a third company registered in a country outside the European Community; c) “Non similar” triangular operation, where three companies VAT registered in only two member countries are involved (Coman, 2009).

MATERIALS AND METHODS

Practically, “classical” or “proper” triangular operations involve the participation of three companies VAT registered in three Community member countries. So, there is the issue
of fiscal implications regarding VAT in the respective situations, directly related to the goods’ delivery conditions, mentioned in the agreements signed by parties involved. As far as the place of intra-community delivery is concerned, this is less important, because it represents a tax-free operation with deduction right. But, in determining of the place of intra-community purchase (which is an operation the beneficiary must pay the tax for, yet through reverse VAT charge mechanism) the general rule says it is the place where the goods are, at the end of their transportation (Raileanu and Raileanu, 2009).

In the particular situation where the goods’ transportation ends in another member country than the one issuing registration code in VAT purposes (code which is communicated to the goods’ supplier), the place of the respective intra-community purchase is considered to be the member issuing the registration code in VAT purposes, mentioning that the tax base is reduced accordingly here, if the intra-community purchase was submitted to tax payment in the member country where the transportation ends (Mandoiu, 2010).

RESULTS AND DISCUSSION

If the triangular operation involves the participation of the company A VAT registered in the member country X (obviously, following the operational requirements, from the legal point of view, specific to the respective country), the company B registered in the member country Y and the company C registered in the member country Z, the goods being directly transported from the initial supplier (company A) to the final buyer (company C). In such a situation, the general rule is that the company B is bound to VAT register either in the goods’ expedition community country (country X), or in the goods’ destination country (country Z); here are some situations arising:

a) if the transportation is agreed for the relationship between supplier (company A) and the intermediary beneficiary (company B), the company A undertakes a VAT charge free intra-community delivery, with deduction right, in the member country X, and the company B undertakes an intra-community purchase submitted to the reverse VAT charge, in the member country Z (the final destination country, where the goods are at the end of the transportation). Anyway, the company B has to VAT register in the member country X, where it undertakes an intra-community purchase, and later on it undertakes a domestic chargeable delivery to the company C in the member country Z, by applying the VAT charge specific to the member country Z (please note in the context, that the delivery between the company B and C has no transportation included);

b) if the transportation is agreed for the relationship between the intermediary beneficiary, also called buyer-re-seller (company B), and the final beneficiary (company C), then the delivery between company A and B has no transportation included, and so the company B is bound to VAT register in the member country X. In these conditions, company A undertakes a domestic VAT chargeable delivery in the member country X, and later on company B undertakes an intra-community delivery in the member country (deduction right exonerated operation), and company C undertakes an intra-community purchase in the member country Z, being also the legal person bound to pay tax, but it applies the reverse VAT charge.

In order to reduce administrative obligations of company B (buyer-re-seller), as regards its fiscal VAT registration, there is the possibility to apply simplification measures, only in the situation where the transportation is agreed for the relationship company A and company B (not for the relationship company B and C); and in this case the company B is no longer bound to VAT register in the member country Z. If company B is chargeable person
settled and VAT registered in Romania, company B communicates to the initial supplier (company A) its RO VAT registration code; But, applying the simplification measures, the intra-community purchase is chargeable in the final destination member country and it needs to be stated by the subsequent delivery beneficiary (company C in member country Z), minding to mention in the invoice the person VAT chargeable (for the delivery itself in the member country it belongs to). The buyer-re-seller from Romania (company B) is bound to state the following: it shall report in its VAT deduction statement the subsequent delivery to company C, as VAT exempted intra-community delivery, and it shall also report the subsequent delivery to company C in its recapitulative statement regarding exempted intra-community deliveries in Romania, mentioning company C’s VAT payer code in the country Z, as well as code “T” (for triangular operations).

When applying the simplification measures, if the final buyer is from Romania (country where the goods’ transportation ends), it needs to be highlighted in the invoice as person bound to pay VAT (for the local delivery undertaken by the buyer – re-seller in Romania) and it is bound to state the following: it shall report the respective purchase in its VAT deduction statement, in the line regarding intra-community purchases, thus being applied the reverse charge; it shall also report the respective operation in its recapitulative statement regarding intra-community purchases in Romania.

„Apparent” triangular operations involve the participation of two companies VAT registered in two member countries and a third company registered in a country outside the European Community (Coman, 2009).

For instance, in the above-mentioned situation, the company C is VAT registered in an extra-community country Z. In this context, it may be wondered if it is a triangular operation at all (in the classical meaning), because it is either intra-community delivery/purchase operation or an import/export one. In order to illustrate the case submitted to evaluation, let us suppose the following situation: a company A from Romania, VAT registered in Romania, sells the product X to a company B in Bulgaria, also VAT registered. In turn, the company B from Bulgaria transfers its property rights on the products (through selling) to the company C in Serbia (outside the community market), the goods being transported from Romania directly to Serbia through the charge of the company in Bulgaria or Serbia. Considering the following: the place of goods; delivery is Romania, the place where goods are handed over to the buyer respectively, except that in this case they are not transported or delivered; the Romanian company is not responsible with the goods’ transportation; the company A from Romania undertakes an operation that fits neither in the form of an intra-community delivery, nor in the form of an export, because the goods are taken by the Bulgarian or the Serbian company (as the case may be) from Romanian territory.

It results that: company B from Bulgaria is bound to VAT register in Romania; then, company A in Romania shall undertake to company B a domestic chargeable goods delivery, issuing a VAT invoice and applying Romanian VAT tax.; further on, company B undertakes an export operation (outside the community) to the company C in Serbia, and, for this, it shall submit the export customs statement and the adequate VAT free invoice, mentioning “deduction right exonerated”; the company C in Serbia is bound neither to register nor pay VAT tax; it undertake the import custom papers and it shall pay the adequate taxes in its own country (goods destination country), Serbia respectively (Risti, 2009).

Finally, there is the situation where three companies participate to transactions, being registered in only two community countries (practically, two participating companies are registered in the same member country). Obviously, the respective operations do not actually represent triangular operations, so the reasoning is similar to the previous one (meaning that
the goods are transported directly from the initial supplier to the final buyer, and so, there has to be determined the relationship for which the transportation is assigned), noting that the simplification measures do not apply. In the given situation, there are the following possibilities: the company A from Romania (initial supplier) sells the goods to company B in Romania (buyer – re-seller) which, in turn, sells the goods to company C in Hungary, and the transportation is assigned for the relationship between A and B. In this case, company B undertakes an intra-community deduction right exempted delivery in Romania, and company B undertakes an intra-community purchase in Hungary and it applies the reverse VAT charge, but being bound to VAT register in Hungary, according to legal regulations and operational procedures in this country (Chiriac, 2009). Further on, the company B undertakes a domestic Hungarian VAT chargeable delivery, to company C, which in turn, undertakes a domestic purchase in Hungary, for which it has the right to VAT deduction, accordingly to the normative regulations in this country; company A from Romania (initial supplier) sells the goods to company B in Romania (buyer – re-seller) which, in turn, sells the goods to company C in Hungary, and the transportation is assigned for the relationship between B and C. In this case, the delivery between company A and B has no transportation included and, therefore, company A undertakes to company B a domestic chargeable delivery, applying Romanian VAT. Company B undertakes in Romania a domestic purchase from company A, for which it has the right to tax deduction, and further on an intra-community delivery (deduction right exempted operation) in Romania. Finally, company C undertakes an intra-community purchase in Hungary and applies the reverse VAT charge (Mandoiu, 2010).

The supplier shall undertake an intra-community VAT exempted delivery, because: it has the VAT registration code of the buyer – re-seller from another member country; it shows evidence that the goods were delivered outside Romania, in the member country where the final beneficiary is settled (not the residence country of the buyer – re-seller).

The buyer – re-seller’s regime should not be confused with the intermediary’s fiscal regime (Chiriac, 2009). The operations undertaken by the buyer – re-seller are not chargeable in Romania if they meet both following requirements: the purchase is undertaken for a subsequent delivery of the goods; the goods purchased as buyer – re-seller should be transported, directly from the supplier to the receiver of the subsequent delivery. The goods transportation relationship to the final receiver is compulsory to exist between the supplier and you, both being responsible to the goods’ transportation, according to Incoterms requirements and according to contract stipulations; the buyer – re-seller should be VAT registered in Romania; the buyer – re-seller should nominate the beneficiary of the subsequent delivery as the person bound to pay the tax (Mandoiu, 2010). This is based on the issued invoice which includes the final beneficiary’s VAT registration code.

Regarding the beneficiary’s obligations, Fiscal Code expressly stipulates that the place of intra-community purchase of goods is the member country where the goods’ delivery or transportation ends, taking into consideration the fact that the beneficiary do not communicate to the supplier a VAT code from another member country than the one of its registration. The persons bound to pay is the persons which undertakes the chargeable intra-community purchase of goods. The operations’ taxation shall follow the reverse VAT charge, as the operation is reported in the VAT deduction statement, both as collected tax and deduction tax, using the accounting formulae: $4426 = 4427$.

Following these rules, the operation’s taxation at destination is much easier, through reverse charge, rather than requesting to the beneficiary to reimburse VAT from another member country according to VIII directive of European Economic Community (Lang et al., 2009).
There is no triangular transaction if one of the partners is established in a member country. In this case, depending on the position of that person, export or import operations need to be undertaken. Yet, there is one transaction with a non-EU person which may become triangular, but only when the extra-community person is the buyer – re-seller, VAT registered in the European community (Mandoiu, 2010).

CONCLUSIONS

Triangular operations generate a series of particularities as regards the obligations of the supplier, the buyer – re-seller and the beneficiary.

The buyer – re-seller’s regime is strictly ruled by the Fiscal Code in order not to be confused with the commissioners’ fiscal regime.

There is a derogation rule for VAT registered persons acting as buyer – re-seller, buying and further on delivering goods on its behalf. It is impossible to confuse this feature with any of the commissioner or the mandatory characteristics, because they are always acting at the express order of the person they represent.

REFERENCES