THE SALE OF SECOND HAND TRANSPORTATION

COMERŢUL CU MIJLOACE DE TRANSPORT SECOND HAND

MARCELA BENGESCU[1], RALUCA BENGESCU[2]

[1]University of Pitesti, Romania; m_bengescu@yahoo.com
[2]Dragomir&Associates Law Firm, Romania

Abstract: *This paper depicts tax an accounting issues related to the trade of second hand vehicles. In respect of arguing the solution of this issue, in this paper there have been made references to the legislation in force.*

Key words: *second hand, special regime, normal regime, profit margin, VAT*

INTRODUCTION

It is very important to distinguish between „a second hand vehicle" and „the special regime for second hand assets".

The difference between brand new means of transportation and second hand ones is based on the criteria provided in art. 125^1 of the Tax Code.

In this regard, it is considered that a vehicle is new if it has been used for less than 6 months or it has travelled less than 6.000 km.

In accordance with the Tax Code art. 152^2, second hand assets are tangible assets which may be reused in their state or after carrying out repairs.

The special regime for second hand assets in accordance with article 152^2 of the Tax Code applies when the seller is a taxable dealer acting in this quality, and the assets were taxed in the member state from where they are provided. This procedure consists in applying VAT only to the profit margin.

MATERIAL AND METHODS

Trading companies from Romania, registered for VAT purposes may purchase second hand means of transportation from natural or legal persons established in Romania or other states members of the EU.

For the trade with second hand vehicles purchased from EU it is important to clarify the legal regime applied by the provider from which the respective assets are bought. For clarification, we shall define two cases encountered in the intra-community trade with second hand means of transportation.

a) In case of intra-community acquisitions, if the taxable person from Romania has communicated to his supplier, located in a Member State, a valid code for registration for VAT purposes:

- the vendor from a member state of EU records on the invoice "exempt intra-community sale", so he does not charge VAT and reports the delivery in the VIES Declaration;

- the buyer, a taxable person from Romania, registers the intra-community acquisition 371 Products = 401 Suppliers and 4426 deductible VAT = 4427 collected VAT reports the intra-Community acquisition, the VAT return and 390 VIES Declaration.

b) In the case of purchases from specialized suppliers in selling second-hand vehicles, the supplier of the EU Member State records on the delivery bill "Special regime for second-hand assets, the VAT tax base is the profit margin. " In this situation:

- VAT supplier receives the VAT included in the invoice, the sale is not an intra-community delivery and therefore, it is not reported in VIES;

- the buyer, a taxable person in Romania, registers the acquisition 371 Products = 401 Suppliers and reports in the VAT return at 24th line and thus he shall not report it in 390 Statement.

In compliance with the provisions of art. 152 ^ 2, paragraph (2) of the Tax Code" the VAT special regime is applied by a company from Romania only if it fulfills a "reseller" quality and only if the vehicle was purchased from Romania or any other member from one of these categories of providers, as art. 152 ^ 2, par. (2)

- A natural person;

- A taxable person, if the carried out delivery by this person is tax exempted according to article 141 (2) item g);
- A small enterprise for which that asset was object of the capital;
- A reseller company which delivered the asset through special regime.

In order to resale the second hand vechicles, the company from Romania may apply:

- either the normal regime of taxation, in which case the VAT rate applies to the sale price

- either the special regime of taxation, in which case the VAT rate applies to the resulted profit margin;

The profit margin is the difference between the selling price of the selling company and the purchase price paid by the reseller to his supplier.

According to the Methodological Directions, the option regarding the application of the special regime must be notified to the relevant fiscal authority and is kept in force until the 31st of December of the second year subsequent to performing the option.

The taxable reseller is entitled to apply the regular taxation scheme for any delivery eligible for the application of the special profit taxation scheme.

Concerning the special profit taxation regime, the reseller shall specify on the delivery invoices the phrase "VAT included non-deductible".

RESULTS AND DISCUTIONS

We shall further depict the example of a dealer, a company registered for VAT purposes in Romania, which purchased a second hand car from Italy. The purchase price is of 10.000 Euro. The exchange rate from the date of the invoice issuance is of 4.2 lei/Euro, the same as the one from the date when the title over the car is transferred.

The car was resold in Romania to a reseller with 58.280 lei, VAT 24% included.

In the first model, the Romanian company is considered to have communicated to its Italian supplier a valid VAT registration code. The Italian supplier specified the phrase „Delivery free of VAT" on the invoice.

Solution: The purchaser registers and reports an intra-community acquisition. On the occasion of the resell, it applies the regular taxation

scheme, since the special profit taxation regime cannot be applied to intra-community purchases. Source: The Tax Code, art. 152^2 (11) lett. a).

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No.	Explanation	D	=	C	Amount Euro/lei
1.	Intra-community purchase	371	=	%	58.280 lei
				401	10.000 Euro 42.000 Lei
				378	5.000 Lei
				4428	11.280 Lei
	VAT	4426	=	4427	10.080 Lei
2.	Resell	4111		%	58.280 Lei
				707	47.000 Lei
				4427	11.280 Lei
3.	Discharge of administration:	%	=	371	58.280 Lei
		607			42.000 Lei
		378			5.000 Lei
		4428			11.280 Lei

In the second model, the Romanian purchaser is not considered to have communicated its Italian supplier a valid VAT registration code. The Italian supplier specified the phrase „VAT included" and a referral to the 112 Directive.

Solution: This operation is not taxable on Romanian territory. The purchaser/reseller acquired the vehicle with VAT included in the sell price. This is not an intra-community acquisition whatsoever.

Should the vehicle be resold as second-hand, the VAT shall be calculated only or the profit margin. In this situation, the profit margin with 24% VAT is of: 58.280-42.000=16.280 lei; of which: the taxation base is 16.280/124x100=13.129,03 and VAT 24% =3.150,97 lei. The first purchaser/reseller's accounting, the record are presented as follows:

No.	Explanation	D	=	C	Amount
1.	Vehicle purchase:	371	=	%	58.280,00 Lei
				401	42.000,00 Lei
				378	13.129,03 Lei
				4428	3.150,97 Lei

2.	Resell:	4111		%	58.280,00 Lei
				707	55.129,03 Lei
				4427	3.150,97 Lei
3.	Discharge of administration:	%	=	371	58.280,00 Lei
		607			42.000,00 Lei
		378			13.129,03 Lei
		4428			3.150,97 Lei

Note: The sell invoice shall specify the phrase „VAT 24% included and non-deductible"

It is supposed that whoever buys the means of transport at the price of 58.280 lei shall sell it at a price of 80.000 lei, 24% VAT included. The beneficiary of the purchased vehicle at a price of 80.000 lei, including 24% VAT is a company which will use it as a capital good.

Solution: On purchasing, VAT shall not be deducted because the vehicle is bought in a special margin regime. On sale, the normal regime shall be applied because the beneficiary does not resell the asset. The sale will be under regular taxation regime because the beneficiary does not resell the property.

In this situation, the amount of 80.000 lei is made of: the tax base of 64.516,13 lei and VAT 24% of 15.483,87Lei. The commercial addition is of 64.516,13-58.280,00=6.236,13 lei.

CONCLUSIONS

- The special regime represents the special provisions enforced by the Tax Code for taxation of second hand deliveries;
- The special regime for second hand vehicles applies only when the beneficiary is a reseller;
- The special regime for second hand assets consists in applying the VAT rate on the profit margin;
- The profit margin is the difference between the sale price and the buying price;
- For the acquisitions in profit margin regime, the trader is not entitled to deduct the VAT on those purchases.

- The reseller trader is obliged to deduct VAT for the sales in margin regime but it must specify on the delivery invoices the phrase "non-deductible VAT included".

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