

PROGRAMS FOR MONITORING INTRA-COMMUNITY AQUISITION AND DELIVERY IN ORDER TO REDUCE TAX EVASION

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***Abstract:** In recent years, the problems posed by fraud and tax evasion have worsened considerably, becoming a subject of major concern to the European Union and around the world. Billions of Euros are lost. By reducing fraud and tax evasion, Member States could increase tax revenues, which would also provide greater leeway to restructure their tax systems in such a way as to encourage growth. In addition, given the scale of the challenge, strengthening the fight against fraud and tax evasion is not only a question of income, but also of fairness. Especially in these tough times from economical point of view, honest taxpayers should not have to bear additional tax increases to compensate for the loss of income caused by those who commit fraud and tax evasion.*

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JEL Classification: F38, H26

1. Introduction

For years, the European Union (EU) engages actively in solving these problems, in particular through the adoption of specific legal instruments to implement automatic exchange of information (“AEOI” – *automatic exchange of information*) within the Union. The EU Directive on savings ensures the AEOI in respect of interest income, and a proposal for extending the scope of its application is currently being discussed within the Council.

The Directive on administrative cooperation shall ensure that as from 2015, Member States shall automatically share information, as soon as they become available, with regard to the five categories of income and capital: professional income, bonuses for leaders, life insurance products which are not covered by other directives, pensions, as well as to the ownership of real estate and income from immovable property. On December 6th, 2012, the Commission presented an action plan in order to reinforce the fight against fraud and tax evasion¹⁴. The action plan highlights the need to promote the AEOI as a European and international standard in terms of transparency and information exchange in tax matters. On May 14th, 2013, the ECOFIN Council adopted conclusions in which it welcomes the efforts of the Commission to elaborate measures aimed at combating fraud and tax evasion, as well as aggressive tax planning and recognizes the useful role that the Commission’s action plan for it can play

¹⁴ COM(2012)722 final

in this regard¹⁵. On April 9th, 2013, France, Germany, United Kingdom, Italy and Spain have announced plans for a pilot action concerning the AEOI, based on FATCA model agreed with US. In addition, these Member States have asked Europe to take a leading role in promoting the AEOI in the world and expressed their wish to discuss how progress could be made within the EU with regard to improving the exchange of tax information between all Member States. Timely adoption and implementation are essential to achieve benefits as soon as possible. In order to ensure coherence with the deadline for implementation of the AEOI's to income and capital categories already covered by the Directive on administrative cooperation, the proposed deadlines for transposition and application of the new rules are December 31st, 2014 and January 1st, 2015.

2. Determining factors and risk of intra-Community fraud

The important volume of trade conducted between the Community countries hides a significant potential for fraud of charges and taxes arising from commercial transactions, in particular in the field of VAT. In addition to the impact on tax revenues of the State, the escapist phenomenon in this field distorts fair competition, with the effect of eliminating honest taxpayers. The assertion rests on both the information resulting from the inspections carried out by the specialized bodies and from the signals received from the similar structures in the Community's countries. A particularly worrying aspect is also the formation of criminal groups, well organized, controlling criminal systems that include certain areas of activity. The determining external factors of fraud risk are: heterogeneity of Community countries' legislative systems and lack of standardization of documents accompanying transports, etc.

Intrastat statistical system is based largely on fiscal data. These are the data VAT and VIES that does not have to be identical because the methodologies applied to these kinds of statements are different. VAT return statement and summary statement regarding intra-Community goods deliveries / acquisitions (form 390-VIES) contain very important information for Intrastat statistical system.

Data of economic operators under an obligation to provide statistical information are verified on the basis of the values of intra-Community trade declared in VAT statements and summary statements relating to intra-Community goods deliveries/acquisitions (form 390-VIES) submitted to the Ministry of Public Finance (MPF).

The public institutions (hospitals, schools, religious institutions, etc.) making special VAT return statement and purchase goods from other EU Member States whose annual value is higher than the statistical threshold are also required to submit Intrastat statistical declaration.

Intrastat statistical system is closely related to the fiscal system. This relationship is based on the fact that VIES and VAT data are used in the Intrastat system for the following purposes:

- Identification of economic operators responsible for submitting Intrastat statements (called providers of statistics –PS)
- Verification of the completeness of the data provided in the Intrastat declaration;
- Establishment of annual statistical thresholds for Intrastat statistical system
- Check the quality of data in the Intrastat declarations.
- Estimate data for non-respondent and under statistical thresholds economic operators.

¹⁵ Council's conclusions from May 14th, 2013 regarding fraud and tax evasion (doc. 9549/13 – FISC 94 – ECOFIN 353).

MPF provides to NIS (National Institute of Statistics) the information necessary to monitor intra-Community trade operators and to verify the collected statistical data.

Economic operators obliged to submit Intrastat declaration are identified based on the values declared in VAT statements and summary statements on intra-Community deliveries / acquisitions of goods (form 390 - VIES) for intra-Community exchange of goods. Thus, by using VAT and VIES data, compared to data reported in Intrastat declarations, NIS may identify operators with intra-Community trade of goods, the volume of this trade and if the economic operators that must submit Intrastat declaration fulfill their reporting obligation or not.

Depending on the nature of the transactions, the data in the Intrastat declaration may differ compared to data from VAT statement / summary statements on intra-Community deliveries / acquisitions of goods (form 390-VIES).

For example, the introductions of goods for processing under contract has to be reported to Intrastat, but must not be declared for summary statement regarding intra-Community deliveries / acquisitions of goods (form 390-VIES) nor for the VAT statement. Shipments of goods after processing under contract shall be reported to Intrastat at full value, while for summary statement regarding intra-Community deliveries / acquisitions of goods (form 390-VIES) and for the VAT statement the economic operators shall declare only the cost of processing activity (labor).

A fair and valid VAT identification number is an essential element in the current VAT systems, because it sets the rules and obligations applicable especially to intra-Community trade.

Both tax administrations and businesses must be able to rely on accurate information concerning the VAT status of an economic agent. However, at the moment the data are not always accurate. In some Member States, the VAT identification numbers remain valid even after it was proven that the taxpayer is involved in fraud activities in the field of VAT and disappeared. In addition, the time of recording is also essential to check whether the undertaking will have a real economic activity. Fraud can be prevented if potential evaders have limited possibilities to present themselves as registered contributors for intra-Community trade. VAT on imported goods was paid in customs until December 31, 2016, with the exception of the taxable persons registered for VAT purposes who obtain a certificate of deferment from paying VAT on imports, issued by the Customs authorities. The ceiling on the minimum value of imports for deferment certificate of VAT payment is 100 million Lei over the past 12 months prior to the month in which the certificate is sought or in the previous calendar year. In this case, VAT is not paid to customs, but shall be entered in the VAT return, both as a deductible and collected charge. With effect from January 1, 2017 this feature is applied to all persons registered for VAT purposes.

Businesses and tax administrations should be able to rely on the information they can get relating to the VAT status of a person. The introduction of minimum standards at EU level for the registration and deregistration of taxpayers in the VIES system of information exchange relating to VAT, can lead to increased confidence in this information. The minimum standards listed include objective data that must be supplied by the operator before getting a VAT identification number, as well as the obligation to eliminate the VAT identification number of the VIES database when certain conditions and objective criteria are met, which must be complied with during the procedure for registration and deregistration. Possession of up-to-date information on the status of economic agents is very important for the VAT systems governing intra-Community trade to function properly.

The information in question must also be made available to economic operators in the most efficient way possible. Currently, economic agents can verify the validity of the VAT identification number of their business partners for the VAT purposes in another Member State. However, only some Member States provide information on the names and addresses of the respective business partner. It has already reached an agreement that guarantees that you can get, for all Member States the name and address confirmation electronically. This confirmation should also give more legal certainty to the

applicant, considering that it will be compulsory on the tax authorities concerned. The European Commission is planning to draw in more detail this agreement within the framework of a legislative proposal.

3. Billing - the main element of the VAT system

Billing is a main element of the current VAT system. A legislative proposal aimed at simplification, harmonization and modernization of current rules regarding billing should reduce the administrative burden on businesses. To facilitate compliance with these rules will certainly have an effect on the prevention of fraud.

Invoices for goods' deliveries and internal services provision shall be issued at the latest on the fifteenth day of the month following the month in which the supply of goods or provision of services takes place. VAT related to deliveries/ provisions must be reported in the month of delivery/provision. The invoice must contain the minimum information required by law, provided for in Directive 112/2006.

Taxable persons have the possibility to issue centralizing invoices or invoices on behalf of the supplier / provider and to issue and archive invoices using electronic means. In terms of VAT, signing and stamping the invoices are no longer required.

From January 1st, 2013, were introduced new rules on invoicing, establishing equal treatment for paper-based invoices and electronic ones that meet the same conditions. Thus, any documents or messages on paper or in electronic form are considered invoices if they meet the minimum conditions regarding invoicing. Invoices for taxable operations in Romania must comply with the applicable national rules, and in the case of invoices issued for taxable operations in another Member State it must comply with the rules applicable in that Member State.

There have been introduced new elements to be included in the invoices. For example, if the recipient is the person liable to pay the tax, on invoices will score the endorsement "Reverse Charge"; if the special scheme apply for travel agents, the mention "Margin Scheme – Travel Agencies" and if the invoice is issued by beneficiary name and account of the supplier, the words "Self-invoice" etc.

In the case of electronic invoices, the authenticity of origin and the integrity of content can also be guaranteed by management controls that establish a direct link between an operation, the related invoice and other documents issued in connection with that operation.

VAT chargeability occurs at the time of goods delivery / services provision, with certain exceptions.

Chargeability on intra-Community deliveries (livrări intracomunitare LIC) occurs on the date of issue self-invoice or the fifteenth day of the month following that in which is carried LIC, if an invoice / self-invoice has not been issued to date.

Dissenting opinions lead to mismatches that reduce the usefulness of the gathered information. Such differences undermine the utility of the legislative proposal on reducing the deadlines for recapitulative statements and VAT returns.

4. Conclusions

Certain measures, such as common storage periods and harmonized rules concerning the date on which an invoice must be issued can facilitate controls in the Member States. Currently, there are cases where the applicable invoicing rules are those of the Member State of the customer, for a reverse charge delivery, and in terms of fiscal control of the provider established in another Member State, different rules apply.

Exchange of information between Member States on intra-Community transactions is a key element in allowing the Member State in which the purchase takes place to detect relevant deliveries. This implies, however, that Member States to have the same interpretation of the chargeability of VAT on intra-Community deliveries and acquisitions of goods, in order to ensure that the declaration takes place simultaneously in both Member States.

5. Bibliography

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