

REGIME OF CONTRAVENTIONS AND SANCTIONS RELATED TO VAT TAX DECLARATIONS

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Abstract: In order to better collect taxes and combat fraud and tax evasion by strengthening the national legislative framework, a number of regulations and reports have been put in place for monitoring the declaration of all economic operations between partners in a regulated free market. The provisions adopted in the field of taxation in conjunction with the accounting report provided, respectively reported by the entities to the tax authorities, are applied for the correct assessment of their activity in order to combat the practices of tax avoidance, tax fraud, and tax evasion. This study does not analyze the fiscal policy as a whole, this paper addresses the regime of contraventions and sanctions, as well as the repercussions of non-declaration or incomplete or erroneous declaration of the Recapitulative Statements on intra-Community supplies/acquisitions/services (code D390) and Informative declarations on deliveries/services and purchases made in the national territory (code 394), related to value-added tax.

Keywords: tax returns; contraventions; penalties; tax code; tax procedure code; measures; accounting.

1. Introduction and literature review

In order to combat and reduce fraud and tax evasion, a series of normative acts and reports have been ordered for monitoring the declaration of all economic operations between partners on a regulated free market.

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Accounting includes certain activities that involve performing operations of recording, calculating, analyzing, interpreting, grouping, synthesizing, and preparing information for decision making, providing managers with information for the performance of three managerial functions: planning, control, and evaluation. The phenomena of growth and globalization have led to a sharp increase in the need for financial information. Thus, in order to combat and reduce fraud and tax evasion on the line of value-added tax (VAT), according to the established legislation, the entities that carry out economic operations on the Romanian territory and at the European community level are obliged to report and submit to the tax authorities monthly/quarterly: Recapitulative statements on intra-Community supplies/acquisitions/services (code D390), which may be monitored and verified in the system (VIES) at an intra-Community level on the reality and correctness of these transactions by taxable persons registered for VAT purposes, and "Informative declarations on deliveries/services and purchases made in the national territory (code 394)", for all taxable and taxable operations with the quota provided by law carried out on the national territory, by the taxable persons registered for VAT purposes in Romania. It must be mentioned that through the system (VIES) it can be verified by all economic operators if the partners have/are registered with a valid/valid VAT code at the date of the transaction and it is made available free of charge by the National Agency for Fiscal Administration (ANAF) [1].

Another piece of legislation, in order to combat and reduce tax fraud and evasion, is that suppliers are obliged from 1 July 2022 to send invoices issued in the national system of electronic invoicing RO e-Invoice, regardless of whether the recipients are or do not register in the RO e-Invoice Register.

Some of the methods frequently used in tax evasion are the preparation and submission of false tax returns (with incorrect or incomplete data) with the obvious purpose of truncating the reality and/or failure to prepare mandatory tax returns/reports.

The Court also noted the existence of an express obligation of each citizen to contribute through taxes and fees to public expenditures, provided in art.56 para. (1) of the Constitution, and an obligation of the state to protect national interests in financial activity, according to art.135 para. (2) lit. b) of the Constitution, is justified by the need to ensure certainty in the rhythmic constitution of the financial resources of the state. Thus, there is no doubt that the collection of taxes and duties is the main source of revenue for the state, being one of the most obvious expressions of the defense of national interests financially. Only if it has these budgetary resources, the state will be able to fulfill its obligations towards citizens and economic operators, which were established in art.135 para. (2) lit. a) and b) of the Constitution.

Taxpayers are, by their nature, the most ingenious and inventive in the field of taxation, their imagination sometimes being unmatched, but not at all enviable, they

go to extreme risks when it comes to circumventing the law or, in other words, deceiving the tax authorities, slipping most often, in the area of tax fraud taking advantage of the provisions of the law.

Talpoș (1996) concludes that fraud/legal tax evasion does not exist, it is not the intrinsic consequence of the legislator's will, of the loopholes deliberately left to test the ability of those subject to tax obligations, but rather the consequence of the legislator's inability to surprise explicitly. the text of the law, the totality of the situations, in fact of the economic-financial activity, which are or should be subject to fiscal obligations (Talpoș, 1996).

Combating tax fraud and evasion requires action at a national, Union, and global levels. The process of European integration has led to closer integration of the economies of all Member States, with high volumes of cross-border transactions, as well as a reduction in the costs and risks associated with these transactions. Colasse (1995) examines the main systems of standardization and accounting regulation, noting that the differences between these systems are due in particular to the legal framework, the economic system, the level of development of a country, and the links between accounting and taxation. 1995).

Hoatcă (2008) quoted by Iordache, Raiciu (2016) „for the establishment by the fiscal bodies, correctly, of the prescription term, in case of application of the contravention fines for the deeds provided in art. 336 para. (1) lit. b) of the Fiscal Procedure Code, a clear delimitation of the simple contraventions from the continuous ones is necessary. For a more correct understanding of these notions and a deepening of the notion of “continuous contravention”, we can refer to the analysis by the analogy of the continuous crime, as the contravention law borrows certain features from the criminal law, considering the common nature of the two forms. illegal (contravention and crime) ”(Hoatcă, 2008; Iordache, Raiciu, 2016). Lăcrița (2012) states that, for the correct and full understanding of these problems, “this paper also presents the practical and legal working methodology of the tax system which establishes, accurately and on the basis of legal documents: 1) the date from which the fiscal body ascertains the non-fulfillment of a fiscal obligation, the date from which the limitation period is established within which fines may be applied in case of continuous contraventions; 2) the date on which the deed takes place, the date from which the limitation period is established within which fines may be applied in case of simple contraventions” (Lăcrița, 2012). Munteanu, Zuca (2015) states that accounting engineering is defined by some authors as representing: “the process by which, given the existence of gaps in rules, accounting figures are manipulated and, taking advantage of flexibility, those measurement practices are chosen and information that allows the transformation of summary documents from what they should be into what managers want or the process by which transactions are structured in such a way as to allow the production of the desired accounting result”

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(Munteanu, Zuca, 2011). Panayi (2007) highlights the high costs of running different businesses and thus the reduction in the scope of profits associated with cross-border transactions (Panayi, 2007, pp. 15).

Saguna (2001) In the Treaty on fiscal financial law, defines fiscal policy as: [...] the set of fiscal decisions taken by the public decision-maker, in order to ensure financial resources, intended to finance public needs and achieve certain purposes economic and social, in the conditions in which real or objective factors act on the economy, whose tendency is not exclusively cyclical (Saguna, 2001).

Todor, et al. (2017) argues: Given the competitive market mechanisms and the tendency of modern states to intervene in the tax economy, we can easily see the significant role of taxes, whether we refer to direct or indirect, being used as a lever of the economy policy by which we can accentuate or slow down certain areas of activity and increase or decrease consumption in a certain category of goods or services (Todor, et al., 2017).

Talaghir, et al. (2000) present that the object of accounting is the reflection in monetary terms of the patrimony, its movement, and transformation as a result of economic operations and the results obtained in a given perimeter (Talaghir, Negoescu, Talghir-Cretu, 2000).

The paper is organized as follows: the introduction and literature review section presents the current theoretical and doctrinal debates regarding fiscal policy, *lato sensu*, and VAT policy, *stricto sensu*. The second section represents the empirical part where it is analyzed and debated an important case study at the Romanian level. The third section highlights the final assessments and considerations regarding the study by outlining the main good parts and the remaining agenda on VAT issues and problems.

2. TBG Group SRL case study

TBG Group SRL operates in the automotive industry, its object of activity being the production of parts and accessories for motor vehicles and motor vehicles. The global automotive industry is an extremely diverse sector that includes manufacturers, suppliers, dealers, retailers, original equipment manufacturers, aftermarket component manufacturers, etc.

The company during the year 2021, was the subject of a partial tax inspection on the VAT line.

Following the verifications and analysis of the tax returns, it was found that TBG Group SRL, in relation to its partners, submitted Recapitulative declarations regarding intra-community supplies/acquisitions/services (code D390) and Informative declarations regarding deliveries/services and acquisitions made on national territory (code 394), inaccurate and with differences in declaration consisting of:

- non-declaration or late declaration by the commercial partners of TBG Group SRL of the performed transactions;
- undeclared deliveries by suppliers and justified by the entity with supporting documents registered in the accounting records, according to the account statement;
- the declaration by TBG Group SRL on the erroneous fiscal registration code of the supplier, respectively of the declaration of a different VAT code than that of the supplier;
- non-declaration or declaration at another period by TBG Group SRL of purchases made from various suppliers;
- deliveries of goods and services not declared or incorrectly declared by partners from the other EU Member States;
- intra-community deliveries of goods and services declared by the intra-community partner in the next reporting period or on another VAT code;
- intra-community deliveries declared by the supplier, and declared by TBG Group SRL at another period or on another VAT code;
- intra-community deliveries of goods to intra-community partners on an invalid VAT code;
- intra-community acquisitions of goods and services not declared or erroneously declared by the entity.

2.1 On the submission of recapitulative statements on intra-Community supplies/acquisitions/services (code D390) for 2021

The verification of the recapitulative statements regarding intra-community deliveries/acquisitions/services (code D390) showed that in the months: February, April, June, August, September, and October 2020, TBG Group SRL did not declare the purchases of goods/services from certain partners with whom he developed trade relations.

The situation of discrepancies between the amounts declared in the recapitulative statements by the company and the amounts declared by its partners results in the following negative differences in the statement:

- in February 2020, TBG Group SRL, VAT code RO2000000, appears with a negative reporting difference of 19,346 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code AT2020202;
- in April 2020, TBG Group SRL, VAT code RO2000000, appears with a negative reporting difference of 40,000 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code AT2020202;

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- in June 2020, TBG Group SRL, VAT code RO2000000, appears with a negative reporting difference of 10,222 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code DE2020202;
- in October 2020, TBG Group SRL, VAT code RO2000000, appears with a negative reporting difference of 13,777 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code SK2020202.

Regarding the above facts, respectively by not declaring the acquisitions of goods/services from the partners listed above, with which the Company TBG Group SRL carried out commercial relations during February, April, June, August, September, and October 2020, the provisions were violated. art.325 para. (1) of Law no. 227/2015 regarding the Fiscal Code, corroborated with art. 59 of Law no. 207/2015 on the Fiscal Procedure Code, which provides the following: „Art. 325 - Summary statement:

(1) Any taxable person registered for VAT purposes according to art. 316 or 317 must draw up and submit to the competent tax authorities, by the 25th of the month following a calendar month, a recapitulative statement stating:

- a) intra-community deliveries exempt from duty under the conditions provided in art.294 para. (2) lit. a) and d), for which the chargeability of the tax arose in the respective calendar month;
- b) the deliveries of goods carried out within a triangular operation provided in art.276 para. (5) made in the Member State of the arrival of the goods and declared as intra-Community deliveries with a T-code, for which the chargeability of the tax arose in that calendar month;
- c) the provision of services provided in art.278 para. (2) carried out for the benefit of taxable persons not established in Romania but established in the European Union, other than those exempt from VAT in the Member State in which they are taxable, for which the chargeability of the tax arose in the respective calendar month;
- d) intra-community acquisitions of taxable goods, for which the chargeability of the tax arose in the respective calendar month;
- e) the acquisitions of services provided in art.278 para. (2), made by taxable persons from Romania who have the obligation to pay the tax according to art.307 para. (2), for which the chargeability of the tax arose in the respective calendar month, from taxable persons not established in Romania, but established in the European Union.
- f) the intra-community deliveries of goods provided in art.315¹ para. (8) lit. c) and d)”.

„Art. 59. Periodic provision of information:

(1) The taxpayer/payer is obliged to provide periodically to the central fiscal body information regarding the activity carried out.

(2) The taxpayer/payer who provides an electronic interface through which the online commercial transactions are facilitated is obliged to periodically provide to the central fiscal body information regarding the transactions carried out through it.

(3) Providing the information provided in par. (1) and (2) are made by completing a statement on one's own responsibility.

(4) The nature of the information, the periodicity, as well as the model of the declarations shall be approved by order of the president of the A.N.A.F”.

As a result of the violation by the verified taxpayer of the above legal provisions, the verified company was sanctioned for minor offenses according to art.337 para. (1), lit. b), of Law no. 207/2015 - regarding the Fiscal Procedure Code where the following are provided: [...] “Submission of incorrect or incomplete recapitulative statements”. The contravention provided in par. (1) shall be sanctioned with a fine according to art.337 para. (2), lit. b) of Law no. 207/2015 on the Fiscal Procedure Code: [...] „B) with a fine from 500 lei to 1,500 lei in case of committing the deed provided in let. b)”.

The entity for the deed - considered continuous according to art.13 par. (2) of O.G. no. 2/2001 „In case of continuous contraventions, the term provided in par. (1) runs from the date of cessation of the act. The contravention is continuous in the situation in which the violation of the legal obligation lasts in time”, was sanctioned contravention with the amount of 1,500 lei, according to art.337 para. (2), lit. b) of Law 207/2015 on the Fiscal Procedure Code, drawing up the minutes of finding and sanctioning the contravention no. 0100000/20.12.2021. The fine was paid with O.P. no. 1000/20.12.2021.

The above provisions are supplemented by the provisions of O.G. no. 2/2001 regarding the legal regime of contraventions.

In accordance with art.338 para. (3) "The offender may pay within a maximum of 15 days from the date of delivery or communication of the report half of the minimum fine provided in this code, the ascertaining agent mentioning this possibility in the report".

As a result of the entity not declaring the acquisitions of goods and services from the partners listed above in the Recapitulative Statements regarding intra-community deliveries/acquisitions/services (code D390) in the months: of March, April, July, August, October 2021, according to OPANAF procedures no. 3833/2015, corroborated with art.113 para. (2) and art.118 para. (8) of Law no. 207/2015 on the Fiscal Procedure Code, the Provision on the measures established by the fiscal inspection bodies was drawn up: “The taxpayer/payer has the obligation to fulfill the measures provided in the act drawn up during the fiscal inspection”, which ordered the restoration and submission with correct and complete data of the recapitulative statements regarding intra-community deliveries /acquisitions/services (code D390), related to the months: February, April, June, August, September and October 2020,

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following the correlation of data representing deliveries/acquisitions/services within the community (code D390) with those declared in the VAT returns.

The differences found and presented above have no fiscal influences, the errors being only from a declarative point of view.

It must be mentioned that, in February 2018, the entity benefited from the provisions of the Prevention Law no. 270/2017, being sanctioned with a warning for not submitting the recapitulative statements regarding intra-community deliveries/acquisitions/ services (code D390), according to art. 4, in which the following are provided:

(1) In case of finding the commission of one of the contraventions established by the Government decision provided in art.10 para. (3), the ascertaining agent concludes a report of ascertaining the contravention by which the sanction of the warning is applied and to which he attaches a remediation plan, in compliance with the provisions of the present law. In this situation, no additional sanctions are applied.

(2) The ascertaining agent does not draw up a remediation plan, in which case only the warning sanction is applied, in the following situations:

a) if, during the control, the offender fulfills his legal obligation;

b) in case the committed contravention is not continuous.

(3) The sanction of the warning is applied according to par. (1) and (2) and in the situation where the sanctioning of the contraventions provided by the Government decision from art.10 para. (3) expressly establishes the exclusion from the application of the warning.

(4) The responsibility for fulfilling the remedial measures rests with the person who, according to the law, bears the contravention liability for the ascertained deeds.

(5) The model of the remediation plan that is annexed to the report of finding the contravention and applying the sanction is provided in the decision mentioned in art.10 para. (3)".

2.2 Submission of the Informative Declarations regarding the deliveries/services and the acquisitions made on the national territory (code 394) related to the year 2021

From the informative declarations regarding the deliveries/services and the acquisitions made on the national territory (code 394), it results that in the months: of March, April, July, August, October, and November 2021, TBG Group SRL did not declare the acquisitions of goods/services from certain partners with whom it has developed trade relations.

From the Situation of the discrepancies between the amounts declared in the Informative Declarations by the company and the amounts declared by its partners, the following negative differences in declaration result:

- in April 2021, TBG Group SRL, VAT code RO2000000, appears with a negative difference in VAT reporting amounting to 30,963 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code RO2020202;
- in July 2021, TBG Group SRL, VAT code RO2000000, has a negative VAT reporting difference of 10,655 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code RO2020202;
- in August 2021, TBG Group SRL, VAT code RO2000000, appears with a negative difference in VAT reporting amounting to 13,320 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code RO2020202;
- in October 2021, TBG Group SRL, VAT code RO2000000, has a negative VAT reporting difference of 12,856 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code RO2020202;
- In November 2021, TBG Group SRL, VAT code RO2000000, appears with a negative difference in VAT reporting amounting to 13,958 lei, resulting from the commercial relationship with the partner Societies ABC SRL, VAT code RO2020202.

Analyzing the above facts, respectively by not declaring the acquisitions of goods/services from the partners listed above, with which the Company TBG Group SRL carried out commercial relations during March, April, July, August, October, and November 2021, the provisions were violated. art.59 of Law no. 207/2015 on the Fiscal Procedure Code, which provides the following: „Art. 59. Periodic provision of information:

- (1) The taxpayer/payer is obliged to provide periodically to the central fiscal body information regarding the activity carried out.
- (2) The taxpayer/payer who provides an electronic interface through which the online commercial transactions are facilitated is obliged to periodically provide to the central fiscal body information regarding the transactions carried out through it.
- (3) Providing the information provided in par. (1) and (2) are made by completing a statement on one's own responsibility.
- (4) The nature of the information, the periodicity, as well as the model of the declarations shall be approved by order of the president of the A.N.A.F”.

As a result of the violation by the verified taxpayer of the above legal provisions, the verified company was sanctioned for minor offenses according to art.336 para. (1), lit. h), of Law no. 207/2015 - regarding the Fiscal Procedure Code where the following are provided: “Failure to provide on-time by the taxpayer/payer the periodic information requested by the fiscal body according to art. 59”.

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The contravention provided in par. (1) shall be sanctioned with a fine according to art.336 para. (2), lit. c) of Law no. 207/2015 on the Fiscal Procedure Code: „c) with a fine from 12,000 lei to 14,000 lei for the legal persons included in the category of medium and large taxpayers and with a fine from 2,000 lei to 3,500 lei, for the other legal persons, as well as for the natural persons, in case of committing the deed provided in para. (1) lit. e) -h)”.

The entity for the deed - considered continuous according to art.13 par. (2) of O.G. no. 2/2001 „In case of continuous contraventions, the term provided in par. (1) runs from the date of cessation of the act. The contravention is continuous in the situation in which the violation of the legal obligation lasts in time”, was sanctioned contravention with the amount of 12,000 lei, according to art. 336 para. (2), lit. c) of Law 207/2015 on the Fiscal Procedure Code, drawing up the minutes of finding and sanctioning the contravention no. 0100000 / 20.12.2021. The fine was paid with O.P. no. 1000 / 20.12.2021.

The above provisions are supplemented by the provisions of O.G. no. 2/2001 regarding the legal regime of contraventions.

In accordance with art.338 para. (3) "The offender may pay within a maximum of 15 days from the date of delivery or communication of the report half of the minimum fine provided in this code, the ascertaining agent mentioning this possibility in the report".

As a result of the entity not declaring the acquisitions of goods and services from the partners listed above in the Informative declarations regarding the deliveries/services and acquisitions of goods made on the national territory (code 394) in the months: March, April, July, August, October 2021, according to OPANAF procedures no. 3833/2015, corroborated with art.113 para. (2) and art.118 para. (8) of Law no. 207/2015 on the Fiscal Procedure Code, the Provision on the measures established by the fiscal inspection bodies was drawn up: “The taxpayer/payer has the obligation to fulfill the measures provided in the act drawn up during the fiscal inspection”, which ordered the restoration and submission with correct and complete data of the Informative Declarations regarding the deliveries/services and purchases of goods made on the national territory (code 394), related to the months: March, April, July, August, October 2021, following the correlation data representing the deliveries/services and purchases of goods made on the national territory (code 394) with those declared in the VAT returns.

The differences found and presented above have no fiscal influences, the errors being only from a declarative point of view.

We mention that, in February 2018, the entity benefited from the provisions of the Prevention Law no. 270/2017, being sanctioned with a warning for not submitting the Informative Declarations regarding the deliveries/services and the acquisitions

made on the national territory code 394, according to art. 4, in which the following are provided:

(1) In case of finding the commission of one of the contraventions established by the Government decision provided in art.10 para. (3), the ascertaining agent concludes a report of ascertaining the contravention by which the sanction of the warning is applied and to which he attaches a remediation plan, in compliance with the provisions of the present law. In this situation, no additional sanctions are applied.

(2) The ascertaining agent does not draw up a remediation plan, in which case only the warning sanction is applied, in the following situations:

- a) if, during the control, the offender fulfills his legal obligation;
- b) in case the committed contravention is not continuous.

(3) The sanction of the warning is applied according to par. (1) and (2) and in the situation where the sanctioning of the contraventions provided by the Government decision from art.10 para. (3) expressly establishes the exclusion from the application of the warning.

(4) The responsibility for fulfilling the remedial measures rests with the person who, according to the law, bears the contravention liability for the ascertained deeds.

(5) The model of the remediation plan that is annexed to the report of finding the contravention and applying the sanction is provided in the decision mentioned in art.10 para. (3)".

As a result of the dynamic evolution of the economy and the transactions between the partners, at the legislative level, there were changes regarding the Informative Declaration on deliveries/supplies and purchases of goods made on the national territory (code 394), they entered into force starting with 2022, after as follows: the total values entered in the invoices issued/received related to the transactions for which the reverse charge is applied for the operations provided in art.331 - Simplification measures from the Fiscal Code updated with subsequent amendments, respectively: „(1) By exception from the provisions of art.307 para. (1), in the case of taxable operations, the person obliged to pay the tax is the beneficiary for the operations provided in par. (2). The obligatory condition for the application of reverse charge is that both the supplier and the beneficiary are registered for VAT purposes according to art.316.

(2) The operations for which the reverse charge is applied are:

- a) the delivery of the following categories of goods: 1. ferrous and non-ferrous wastes from ferrous and non-ferrous scrap, including semi-finished products resulting from their processing, manufacture, or smelting; 2. Residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, and industrial residues containing metals or their alloys; 3. waste recyclable materials and used recyclable materials consisting of paper, cardboard, textiles, cables, rubber, plastic, shards of glass and glass; 4. the materials referred to in points

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1 to 3 after their processing/transformation by cleaning, polishing, sorting, cutting, fragmenting, pressing or casting into ingots, including non-ferrous metal ingots, for which other elements have been added. aliere;

b) delivery of wood and wood materials, as defined by Law no. 46/2008 - Forestry Code, republished;

c) the delivery of cereals and technical plants, including oilseeds and sugar beet, which are not in principle intended as such for final consumers. The methodological norms establish the CN codes corresponding to these goods;

d) the transfer of greenhouse gas emission certificates, as defined in art. 3 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for the marketing of greenhouse gas emission allowances in the Community and amending Council Directive 96/61/EC, transferable in accordance with art. 12 of the Directive, as well as the transfer of other units that may be used by operators in accordance with the same Directive;

e) the delivery of electricity to a taxable person trader, established in Romania according to art.266 para. (2). The taxable person trader is the taxable person whose main activity, in terms of electricity purchases, is its resale and whose own electricity consumption is negligible. Negligible own consumption of electricity means a maximum consumption of 1% of the purchased electricity. The purchaser holding the license for the administration of the centralized electricity markets issued by the National Energy Regulatory Authority, for the transactions on the market for the next day and on the domestic market, is considered to be a taxable person. The buyer of electricity who cumulatively meets the following conditions is also considered to be a taxable person as a trader:

1. holds a valid electricity supply license, a license for the activity of the electricity trader or any license that allows the sale of electricity, issued by the National Energy Regulatory Authority, which proves that the respective buyer is a trader of electricity;

2. its main activity, in terms of electricity purchases, is its resale and its own consumption of purchased electricity is negligible. To this end, the taxable person must submit to the competent tax authority, by December 10 of each year, a declaration on his own responsibility showing that he meets this condition, respectively that in January-November of that calendar year had its own consumption of up to 1% of the purchased electricity, which is valid for all electricity purchases made in the following calendar year. If the declaration on his own responsibility covers periods prior to the year of filing, the taxable person shall indicate the date from which he fulfills this condition in order to be considered a trader as the taxable person from that date.

The taxable person who obtains the electricity supply license or the license for the activity of the electricity trader or any license under which he carries out electricity

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trading, during December 1-31 of a calendar year must submit it to the competent tax authority, during January 1-20 of the following calendar year, a self-declaration stating that he had a maximum consumption of 1% of the electricity purchased during the December period in which he held the supplied license or the license for the activity of the trader. electricity license or license under which it carries out electricity trading, which is valid for all electricity purchases made in the calendar year in which this declaration is submitted. A.N.A.F. has the obligation to display on its website the list of taxable persons who have submitted the respective declarations by 31 December of each year at the latest, respectively by 31 January of the following year in the case of electricity buyers who have obtained the license of supply of electricity or the license for the activity of the electricity trader or the license under which he carries out electricity trading between 1 and 31 December of each year. The electricity supplier does not apply a reverse charge if, at the time of delivery, the beneficiary who had the obligation to submit to the competent tax authority the declaration of his own responsibility for negligible electricity consumption is not included in the «List of taxable persons who submitted their own responsibility the condition provided in art.331 para. (2) lit. e) point 2 of the Fiscal Code». In the case of electricity buyers who have obtained the supplied license or the license for the activity of the electricity trader or the license under which they carry out electricity trading between 1 and 31 December of the previous year or in the case of electricity buyers who have submitted the declaration on their own responsibility regarding their own negligible consumption of delayed electricity, the suppliers may issue correction invoices with the minus sign, according to art.330 para. (1) lit. b), in order to apply the reverse charge, respectively to regularize the charge and return it to the beneficiary for the deliveries made until the date of posting on the A.N.A.F. of the buyer in the list of taxable persons who have filed the declarations on their own responsibility, or for deliveries made from the date mentioned in the declaration on their own responsibility until the date of submission by the buyer of this declaration in case of late submission. For purchases of electricity made in the year in which the buyer obtains a valid license to supply electricity or a license for the activity of the electricity trader or a license under which he carries out electricity trading, issued by the National Energy Regulatory Authority, which proves that the buyer is a trader of electricity, the buyer must submit to the seller a statement on his own responsibility showing that his main activity, in terms of purchases of electricity, is its resale and its own consumption estimated from the purchased electricity is negligible, which is valid until December 31 of that year.

f) the transfer of green certificates as defined in article 2 lit. h) of Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy sources, republished, with subsequent amendments and completions;

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g) the constructions, as defined in art.292 para. (2) lit. f) point 2, the construction parts and the lands of any kind, for the delivery of which the taxation regime is applied by the effect of the law or by option;

h) the gold deliveries of investments made by taxable persons who have exercised their taxation option and the deliveries of raw materials or semi-finished products of gold with a title greater than or equal to 325 per thousand, to buyers of taxable persons;

i) the supply of mobile telephones, i.e. devices manufactured or adapted for use in connection with an authorized network and operating on certain frequencies, whether or not they have any other use;

j) the supply of integrated circuit devices, such as microprocessors and central processing units, before their integration into end-user products;

k) supplies of game consoles, tablet PCs, and laptops.

l) the delivery of natural gas to a taxable person trader, established in Romania according to art.266 para. (2). A trader is a taxable person representing the taxable person whose main activity, in terms of natural gas purchases, is their resale and whose own natural gas consumption is negligible. Negligible natural gas consumption means a maximum consumption of 1% of the quantity of natural gas purchased. The buyer who holds the license for the administration of centralized natural gas markets issued by the National Energy Regulatory Authority, for the transactions in which he holds the quality of counterparty, is considered a trader. The natural gas buyer is also considered to be a taxable person who meets the following conditions cumulatively:

1. holds a valid natural gas supply license or a license for the activity of the natural gas trader, issued by the National Energy Regulatory Authority, which proves that the respective buyer is a natural gas trader;

2. its main activity, in terms of natural gas purchases, is their resale and its own consumption of the quantity of natural gas purchased is negligible. To this end, the taxable person must submit to the competent tax authority, by December 10 of each year, a declaration on his own responsibility showing that he meets this condition, respectively that in January-November of that calendar year had its own consumption of a maximum of 1% of the quantity of natural gas purchased, which is valid for all-natural gas purchases made in the following calendar year.

The taxable person who obtains the natural gas supply license or the license for the activity of the natural gas trader during the period 1-31 December of a calendar year must submit to the competent fiscal body, during the period 1-20 January of the following calendar year, a declaration on from which it has had its own consumption of up to 1% of the quantity of natural gas purchased during the period in December in which it held the supplied license or the license for the activity of the natural gas trader, which is valid for all purchases of natural gas. natural gas carried out in the

calendar year in which this declaration is submitted. A.N.A.F. has the obligation to publish on its website the list of taxable persons who have submitted the respective declarations by 31 December of each year at the latest, respectively by 31 January of the following year in the case of natural gas buyers who have obtained the natural gas supply or license for the activity of the natural gas trader between 1 and 31 December of each year. The natural gas supplier does not apply a reverse charge if, at the time of delivery, the beneficiary who had the obligation to submit to the competent tax authority the declaration on his own responsibility regarding the negligible consumption of natural gas is not included in the "List of taxable persons the condition provided in art.331 para. (2) lit. 1) point 2 of the Fiscal Code». In the case of natural gas buyers who obtained the supplied license or the license for the activity of the natural gas trader between 1 and 31 December of the previous year or in the case of natural gas buyers who submitted the declaration on their own responsibility regarding their negligible natural gas consumption with delay, suppliers may issue correction invoices with the minus sign, according to art.330 para. (1) lit. b), in order to apply the reverse charge, respectively to regularize the charge and return it to the beneficiary for the deliveries made until the date of posting on the A.N.A.F. of the buyer in the list of taxable persons who submitted the declarations on their own responsibility or for deliveries made from the date mentioned in the declaration on their own responsibility until the date of submission by the buyer of this declaration in case of late submission.

For purchases of natural gas made in the year in which the buyer obtains a valid natural gas supply license or a license for the activity of the natural gas trader, issued by the National Energy Regulatory Authority, which proves that the respective buyer is a trader of the purchaser must submit to the seller a statement on his own responsibility stating that his main activity, in terms of natural gas purchases, is their resale and his own estimated consumption of the quantity of natural gas purchased is negligible, which is valid until December 31 of that year.

(3) On the invoices issued for the deliveries of goods/services provided in par. (2) the suppliers/providers will not enter the related collected fee. The beneficiaries will determine the related tax, which will be highlighted in the statement provided in art.323, both as a collected tax and as a deductible tax. The beneficiaries have the right to deduct the tax within the limits and under the conditions established in art. 297-301.

(4) Both the suppliers and the beneficiaries are responsible for the application of the provisions of this article. The methodological norms establish the responsibilities of the parties involved in the situation where no reverse charge has been applied.

(5) The provisions of this article shall apply only to the supply of goods/services within the country.

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(6) The provisions of par. (2) lit. c), d), e), f), i), j), k) and l) shall apply until June 30, 2022, inclusive”.

3. Conclusions and discussions

The submission, reporting, and recapitulative statements is an imperative legislative requirement, which applies to all taxable persons registered for VAT purposes in Romania who have business relations with partners from EU member states and who must declare intra-Community supplies, purchases, or services, as well as the deliveries of goods, the provision of services and the acquisitions of goods and services made on the Romanian territory to/from any person.

Recent jurisprudence of the CJEU shows that, despite the principle of VAT neutrality, the VAT deduction can be refused if VAT has been applied incorrectly. Thus, “we reiterate the need to verify the VAT treatment, especially in the case of chain transactions with goods, the VAT deduction not being guaranteed by simply mentioning the invoice tax”. This study did not analyze the fiscal policy as a whole, instead, it analyzed the deliveries/services and purchases made on the national territory (code 394), related to the value-added tax.

Following the findings by the tax authorities regarding the inaccurate and differing declaration of the declarations, the company TBG Group SRL is subject to the risk of being verified at successive time intervals, as a result of the entry in the database of the tax authority, being prepared a fiscal risk, which may lead to the cancellation of tax facilities as the case may be, the company representing a fiscal risk of undue reimbursement of value-added tax.

The conclusion that emerges from this paper is that the provisions and policies adopted in the field of taxation in conjunction with the accounting information provided, respectively reported by entities to the tax authorities, are applied for the correct assessment of their activity for better tax collection, increase budget revenues and combating the practices of tax avoidance, tax fraud, and tax evasion, through recapitulative statements on intra-Community supplies/acquisitions/ services (code D390) and informative declarations on deliveries/services and purchases made on national territory (code 394).

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References

- 1.Colase, B., (1995). General accounting, 4th edition. Translated by Tabără N., Ed. Moldova, Iasi.
- 2.Hotca, M., A., (2008). The legal regime of contraventions, edition 3. Ed. C.H. Beck, Buchares.
- 3.Iordache, M., Raiciu, A., (2016). Considerations regarding the classification of the act of non-submission of term tax declarations in simple contravention or continuous contravention. Available at: https://mfinante.gov.ro/documents/35673/251430/Article_RFPC_05_2016.pdf [Accessed on 02.02.2022].
- 4.Lăcrița, N., (2012). "Date of committing the deed" and "date of finding the deed", elements according to which the limitation period is established and fines are applied. Available at: <https://legestart.ro/data-savarsirii-deed-and-date-of-fact-finding-elements-according-to-which-the-term-is-set-down-description-and-applies-fines> [Accessed on 02.02.2022].
- 5.Munteanu, V., Zuca, M., (2015). The financial accounting of the enterprise. University Publishing House, Bucharest.
- 6.Panayi, C., (2007). Double Taxation, Tax Treaties, Treaty Shopping and the European Community. Eucotax, Kluwer Law International.
- 7.Saguna, D.D., (2001). Financial and fiscal law. All Beck Publishing House, Bucharest.
- 8.Talpos, I. (1996). Public finances. Sedona Publishing House, Timisoara.
- 9.Talaghir, Gh., Negoescu, Gh., Talghir-Crețu, C., (2000). Accounting for everyone. All Beck Publishing House, Bucharest.
- 10.Todor, S.P., Ghiur, R., Brezeanu, P., Dumiter, F., Boiță, M., (2017). The degree of compliance based on excise duties in Romania between 2002 and 2015. Studia Universitatis "Vasile Goldiș" Arad, Economics Series, 27 (3), pp. 1-14.
- 11.*** Law no. 207/20.07.2015 on the Fiscal Procedure Code (M.O. no. 547/ 23.07.2015), with subsequent amendments and completions [Accessed in 02.02.2022].
- 12.*** Government Ordinance no. 2/12.07.2001 on the legal regime of contraventions (M.O. no. 410/25.07.2001), with subsequent amendments and completions [Accessed in 02.02.2022].
- 13.*** Law no. 180/11.04.2002 for the approval of the Government Ordinance no. 2/2001 regarding the legal regime of contraventions (M.O. no. 268/22.04.2002) [Accessed in 02.02.2022].
- 14.*** <https://legislatie.just.ro/Public/DetaliuDocument/238020> [Accessed on 10.02.2022].
- 15.*** <http://www.onpcsb.ro/pdf/ghid%20in%20romana%20ok.pdf> - Investigation of intra-community fraud [Accessed on 10.02.2022].

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16.***https://www.static.anaf.ro/static/10/Anaf/legislatie/Lege571_Codfiscal2003_EN.htm [Accessed in 10.02.2022].

17.***<https://taxrep.ro/vat-exemption-new-provisions/> [Accessed in 10.02.2022].

18.***https://static.anaf.ro/static/10/Anaf/legislatie/Cod_procedura_fiscalaEN.pdf

19.***https://static.anaf.ro/static/10/Anaf/legislatie/HG1050normeCPF_EN.htm [Accessed in 10.02.2022].

Notes:

[1] available at: https://chat.anaf.ro/cod_vat.nsf/request_vat, or on the website of the European Commission available at: https://ec.europa.eu/taxation_customs/vies/vatResponse.html?lockout=ro.