The 14th Economic International Conference: Strategies and Development Policies of Territories: International, Country, Region, City, Location Challenges | May 10-11, 2018 | Stefan cel Mare University of Suceava, Romania

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<https://doi.org/10.18662/lumproc.83>

How to cite: Boghean, F., & Blanariu, M. (2018). Accounting and Tax Perspectives Regarding the International Road Traffic of Goods Activity. In C. Năstase (ed.), *The 14th Economic International Conference: Strategies and Development Policies of Territories: International, Country, Region, City, Location Challenges | May 10-11, 2018 | Stefan cel Mare University of Suceava, Romania* (pp. 320-331). Iasi, Romania: LUMEN Proceedings.
<https://doi.org/10.18662/lumproc.83>

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Accounting and Tax Perspectives Regarding the International Road Traffic of Goods Activity

Florin BOGHEAN¹, Marius BLANARIU²

Abstract

At present, the significant problems faced by most economic agents are represented by the large amount of complex legislation, which is difficult to understand and apply, interpretable and sometimes contradictory to other laws. This is true for companies working in the field of international road transport of goods, a distinct field in Romania which is characterized by a period of growth that has accounted for 3.5% of the registered number of employees in the economy. In the paper I presented a series of additional information on the completion of individual labor contracts in order to obtain a favorable opinion in the case of an inspection carried out by the Labor Inspection Authority (LIA) supervisory bodies, the obligations and problems resulting from the Minimum Wage Law in Germany. I also proposed an alternative solution with a reduced tax burden for applying the provisions of the MiLoG Law. Regarding the research on the evolution of the transport activity this was done for the period 2010-2017 based on the data provided by the National Institute of Statistics and the Ministry of Public Finance.

Keywords:

Road traffic of goods, taxation, accounting treatment

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<https://doi.org/10.18662/lumproc.83>

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Selection and peer-review under responsibility of the Organizing Committee of the conference

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1. Theoretical background on the research theme

Carriers must comply with the provisions of the following normative acts, grouped according to accounting, tax and labor law regulations:

- accounting legislation: OMFP 1802/2014 for the approval of Accounting Regulations on Individual Annual Financial Statements and Consolidated Financial Statements; Law no. 82/1991 regarding the Accounting Law; OMFP 2634/2015 on financial accounting documents;
- tax legislation: Law 227/2015 regarding the Fiscal Code with subsequent amendments and completions; Order no. 103/2016 regarding the approval of the Guidelines for application of the value added tax exemption for the operations stipulated in the Fiscal Code;
- legislation regulating labor relations: Law no. 53/2003 on the Labor Code, as subsequently amended and supplemented; Government Decision no. 518/1995 regarding certain rights and obligations of the Romanian personnel sent abroad for carrying out temporary missions; Government Decision no. 1860/2006 on the rights and obligations of the personnel of the public authorities and institutions during the delegation and posting in another city, as well as in the case of the movement within the city in the interest of service with subsequent modifications and completions; Law no. 16/2017 on the posting of employees in the framework of the provision of transnational services with subsequent amendments and completions; European Directive 96/71 / EC on the posting of workers in the framework of the provision of services; European Directive 2014/67 / EC on enforcement of Directive 96/71 / EC and amending EU Regulation no. 1024/2012 on administrative cooperation through the Internal Market Information System; The Minimum Wage Law (MiLoG) in Germany; Government Decision no. 38/2008 on the organization of the working time of persons performing mobile road traffic activities; Regulation of the European Parliament and of the Council no. 561/2006 on the amortization of certain provisions of social legislation in the field of road traffic;

Looking at the above mentioned legislation, I consider that from an accounting point of view, the economic and financial operations do not present difficulties in their registration, but what puts the professionals in difficulty is the application of the tax and the labor relations legislation, precisely because it is ample, complex, and in some cases ambiguous.

Regarding the organization of the working hours of the persons performing mobile road traffic activities, this is not the responsibility of the economist, but the transport dispatcher and, including the drivers, it will organize the activity so that it follows the provisions of the 2 normative acts that regard driving and rest periods, breaks of motor vehicle drivers

providing road traffic of goods. On the other hand, it must be taken into account the need to comply with the provisions of Law no. 53/2003 regarding the working hours.

In most cases, the distribution of working hours will not be equal (in the sense that the driving periods will not be performed in the same time interval each day), so it is recommended that in the chapter "Working hours" of the individual work contract the entry "The allocation of the work program shall be unequal".

The application of general and special regulations in the field of labor relations, safety and health at work is subject to the Labor Inspection and the persons responsible for keeping and forwarding the General Register of Employees' Evidence, with the drawing up of the labor contracts, the personnel files, the calculation of the rights wages must be subject to compliance with legal provisions.

2. Methodology of research

The scientific research methodology underlying this article is based on fundamental research, attempting to review the main approaches, ideas and opinions of specialists from the specialized literature, while aiming at providing a perspective on the issues addressed. We analyzed the opinions and information provided by the literature using the descriptive method. We used both inductive and deductive methods. The goal at the end of the research was to be able to formulate some relevant conclusions on the accounting and fiscal reflection of the road freight transport activity, identifying at the same time the coordinates that will influence the future development of this activity.

Basically, the real world is a beneficiary of research results, but also a provider of many of the issues that it is called upon to solve. It is the most important real reference, perhaps the only one, if we admit the idea that the theory as a whole has emerged as a result of the need to solve concrete problems and then to generalize. The pure deductive steps have perhaps reached this level after a first stage of linking the theory of reality through some fundamental postulates that have become axiomatic by creating a unanimous belief of their irrefutable and non-demonstrable validity.

3. Delimitation of delegations and details in the transport services

Daily subsistence allowances is one of the main costs of a carrier. Although, apparently, the regulatory framework governing the allowance for delegation / detachment seems simple, the daily subsistence allowances is a controversial topic in this area of activity since the second decade of 2014 was a thematic control period conducted by the National Agency for Tax Administration (NATA). These controls aimed at verifying the correct allocation of the daily subsistence allowances to drivers, finalizing by the fact that the control bodies redefined the amounts given as external daily allowances as salary incomes, recalculating the taxes and social contributions with the appropriate penalties [1].

A major problem faced by professionals is the proper fit of drivers' activity into one of the following concepts: delegation, detachment, transnational detachment. Depending on this classification, the rights and obligations of the parties involved, the tax implications and labor relations will be determined. When referring to delegation and detachment, these two concepts essentially represent a change of job, and in accordance with art. 42, paragraph 1 of the Labor Code, "the workplace may be modified unilaterally by the employer by the delegation or detachment of the employee to a job other than the one stipulated in the individual labor contract" with the addition of the paragraph (2) of the same normative framework "during the delegation or posting, the employee retains his / her office and all the other rights provided in the individual labor contract [4]".

The Labor Code applicable in Romania defines delegation as "the temporary exercise by the employee of the work or assignment given by the employer of the service attributes outside his / her place of work. It may be ordered for a period of up to 60 calendar days in 12 months and may be extended for successive periods of up to 60 calendar days only with the agreement of the employee "[4].

Also, according to the same legislative document posting is "the act whereby the temporary change is ordered for a period of one year at most from the employer's disposal to another employer for the purpose of carrying out works in his / her interest, which is why the contract individual work will be suspended".

If by the definitions provided by Law no. 53/2003 on the Labor Code the distinction between the delegation and the secondment it is made, from the point of view of the European legislation, respectively of the European Directive 96/71 / EC on the detachment of workers in the provision of services, this distinction is not made, it is defined only as an

“employee who, for a limited period, carries on work in the territory of a Member State other than the one normally employed” [2].

The definition of the detached worker is complemented by the provisions of Law no. 16/2017 regarding the posting of employees in the transnational service, defining the detached employee from the territory of Romania as "the employee of an employer established on the territory of Romania who normally works in Romania but who is sent to work for a period of time limited to the territory of a Member State of the European Union, the European Economic Area or the territory of the Swiss Confederation "[3].

Table no. 1. Synthesis of delegation definitions, detachment, detached worker

Labour code		European directive no. 96/71 / EC and Law NO. 16/2017
Delegation	"Temporary employment, at the employer's disposal, by the employee, of work or duties corresponding to his / her service duties outside his / her place of employment."	-
Detachment	"The act ordering the temporary change of the job, at the employer's disposal, to another employer, for the purpose of carrying out works in his / her interest."	<i>detached worker</i> = a worker who, for a limited period, carries on work in the territory of a Member State other than that in which he normally works.

Source: Own processing as defined in the cited legislative acts

Analyzing the information presented in the Table. no. 1 we find that detaching from the point of view of the European legislation is similar to the definition given to the delegation in the Local Labor Code.

4. Taxation of road transport services of goods comparative to road transport services of persons

The main income of the carriers is the equivalent of the services rendered, which according to OMFP 1802/2014 for the approval of the Accounting Regulations on the individual annual financial statements and

the consolidated annual financial statements is evidenced, from the accounting point of view, in account 704 "Revenues from rendered services ", a liability account that corresponds to the 4111" Accounts Receivable " account. What implies the special attention of professional accountants is the VAT (value-added tax) of transport services.

According to art. 268, paragraph (1) of Law 227/2015 regarding the Tax Code in order for an operation to be considered taxable in Romania, it is necessary to meet cumulatively the following conditions:

Figure no. 1. Cumulative conditions for considering a transaction to be taxable in Romania³

Source: Processing according to Art. 268, para. (1) of the Tax Code

Regarding the place of delivery of services, Law no. 227/2015 provides as a general rule that the place of supply of services to a taxable or non-taxable person is the place where the recipient of the services has established his business [5].

Example: A taxable company with headquarters in Romania provides services to company B with its headquarters in France.

Figure no. 2. Example place of delivery service (headquarters)

If the delivery is made to another fixed place of business located in a place other than the registered office, the place of supply of services is the

³ Activities such as: the activities of producers, traders or service providers, from exploration of intangible or tangible property for the purpose of obtaining income of a continuous nature, plus extractive, agricultural activities, of the liberal professions;

place where the fixed office is located. Example: A taxable company with headquarters in Romania provides services to company B with its headquarters in France. Delivery is to another fixed establishment of B in Italy.

Figure no. 3. Example place of service delivery (headquarters and fixed office A)

Also, according to art. 278, par. (4) of the Fiscal Code applicable in Romania, there are a number of exceptions to the above-mentioned general rule. For example, in the case of road passenger traffic services, the place of supply is considered to be the place where the transport is carried out. The taxable person is defined as "any person who carries out, in an independent and independent manner, a series of economic activities, whatever the purpose or outcome of such activities" [5].

In accordance with the tax legislation in the field (Law No 227/2015 on the Fiscal Code and Order No. 103/2016 on the approval of the Guidelines for the application of the value added tax exemption for the operations provided for in the Fiscal Code), the road haulage services are liable to value added tax, exempt from VAT with the right to deduct, depending on the beneficiary's taxable or non-taxable residence. So:

If the beneficiary has its registered office in Romania or has its registered office in another Member State of the European Union but has a fixed establishment in Romania to which the provision of services is performed then the transaction is taxable with 19%;

Figure no. 4. Graphical representation of VAT tax on road traffic of goods (Head office and beneficiary: Romania)

1. If the beneficiary has his place of business in a Member State of the European Union, then the transport operation is exempt from VAT with deduction in accordance with Art. 294, par. (1), lit. c) and d) of the Fiscal Code, irrespective of the territorial range in which the transport is carried out.

Figure no. 5. Graphic representation of road freight services exempt from VAT deductible

The tax exemption is justified by the supplier on the basis of the following documents [5]:

the invoice that must contain:

- serial number;
- date of invoice;
- date of service provision;
- the name, address, VAT identification number of both the provider

and the payee

- name of the services rendered;
- the tax base for exempt transactions
- indication of the rate of duty normally applied
- references to the applicable provisions which show that the provision of services is subject to an exemption;

- the contract concluded with the beneficiary;
- Specific transport documents: International Road Transport Contract (RTC);
- documents showing that the goods transported have been exported.

At the same time, art. 4 of the Order no. 103/2016 regarding the approval of the Guidelines for the application of the value added tax exemption for the operations provided for in the Fiscal Code stipulates that for operations which do not allow the economic agents to have the documents justifying the exemption at the moment of generating, there is a

90 calendar days period from the date on which the chargeable event occurred for the submission of the documents.

As I have stated, road passenger transport services are an exception to the location of the service delivery, taking into account the place where the transport is carried out, depending on the distances traveled. In the presented situation, the Methodological Norms for the application of the Tax Code provides as follows:

- if the point of departure or arrival is on Romanian territory, passenger transport is national;
 - whether the departure or arrival point or both are outside the territory of Romania, passenger transport is international;
 - the place of provision of international passenger transport services is considered to be in Romania for the part of the intra-country route;
 - the invoices or other specific documents for the transport of persons by road are issued for the whole course, without the necessity of separating the equivalent of the national and international routes. In this case, for the intra-country route, the service is exempt from VAT with deduction under Art. 294, par. (1), lit. g), and for the distance traveled outside the country no tax is due because the place of supply is considered not to be in Romania;
 - the tax exemption for international road transport of persons is justified by: a transport license, a roadmap or other documents showing the date of exit / entry from / to the country, targeted, as the case may be, by the customs body, travel or bills where fares are occasional or ticket sales are made through intermediaries.
- if passenger transport is fully national, then the transaction is taxable for value added tax, 19%.

Example: Company A (headquarters in Romania) provides passenger services on the Suceava - Cluj route to company B (headquarters in Romania).

Figure no. 6. Graphic representation VAT charging national passenger transport services

Example: Company A (headquarters in Romania) provides passenger services on Suceava - Paris route to company B (headquarters in Romania). The exit from the country is done through the customs point of Nadlac (Arad).

Figure no. 7. Graphic representation VAT charging international passenger transport services

In summing up the information presented above, we can conclude that the criteria applied for the charging of VAT on road haulage services are different from those of road passenger transport, since in the case of freight transport services, the registered office or fixed establishment of the beneficiary is while in the case of transport of persons the place of transport is taken into account.

5. Conclusions and proposals

Transport is an important area of economic and social activity because through it the space movement of goods is carried out, that is, they have the role of transporting raw materials and materials to the place of production on the one hand, and on the other hand to distribute the goods obtained (either finished products, goods or other types of products) to the sales outlets in order to achieve the purpose of any economic activity, namely obtaining legal profit.

From the analysis of the data provided in the Statistical Yearbook and the Ministry of Public Finance, there is an upward trend in the number of active companies with NACE code 4941 - Road traffic of goods, of the turnover obtained by them (number of active companies NACE code 4941), which shows the importance of this area of activity in the economic life.

Studying the legal framework in this field we found that it is comprehensive, complex, ambiguous, difficult to apply because there are inconsistencies between normative acts, leaving room for interpretations. From the accounting point of view, the registration of the economic and financial operations is not difficult, but what puts professionals in difficulty is the application of the tax legislation and the legislation regulating the labor relations. We have come to this opinion with an example of defining the notion of delegation, detachment, transnational detachment. If Law 53/2003 on the Labor Code provides for a distinction between delegation and posting, Law 16/2017 on the posting of employees in the framework of transnational services, as subsequently amended and supplemented, harmonized with European Directive 96/71 / EC on the detachment of workers the term "detached worker" is defined in the provision of services and, in a brief analysis, it is noted that this latter definition (no posted worker) is similar to the definition of "delegation" addressed in the Labor Code. Depending on the correct classification in one of the 3 situations, the rights and obligations of the parties (employee, employer, beneficiary) are established.

Simultaneously with the advantages of the "EU member state" status, the integration into the European Union has imposed on Romania complying with some conditions and obligations, including with the unitary legislation at community level, as well as the legislation of each country transited in the transport operations. Although there is a need for European legislation to be harmonized, we find situations where states enforce their own rules, often unfavorable, for the rest of the countries. Such a situation is represented by the Minimum Wage Law (MiLoG) in Germany, in which case Romanian carriers, and not only, will have to bear extra additional expenses in order to meet the conditions provided by this normative framework. Although it is a controversial and debated law at the European Parliament level, there are other states that have adopted such a procedure, such as Italy - a minimum wage of EUR 6.30 - 7 per hour, France - a minimum wage of 9,6 euro / gross hour. I consider that the measure imposed by the German authorities is not ethical because, for example, a German carrier receives for the races a fee of 60 eurocents per km, while a Romanian carrier cooperating with the same expedition house as the

German company, receives 31 eurocents / km as tariffs are imposed by the fleet providing the races.

Also, taking into account that one of the reasons for these thematic controls was the fact that a part of the economic agents concluded individual labor contracts with their employees, drivers, with a 2-hour daily work standard with a salary of 300 lei maximum (for not having to pay large sums representing the obligations to the consolidated state budget) and giving an external daily allowance of EUR 2,400 / month for each employee, propose as a solution the imposition of new ceilings in which the amounts received as a daily allowance not to be taxed according to the salary with which the staff of the unit is assigned. In other words, for a salary ranging from "x" to "x + n", the non-taxable daily allowance is up to the "y", for the salary between "z" and "z + n" either up to the "k". Thus, I believe that the situation outlined above would be avoided. However, the issuer of the law should consider not imposing a high number of thresholds in order not to impede law enforcement.

Another solution proposed to avoid the aforementioned situation would be to lower the non-taxable daily allowance at a monthly level, following the example of Poland. In addition to a daily cap of EUR 87.5, there is a condition "but no more than y euros per month".

As regards the VAT charging of road transport services, we can conclude that the criteria applied for the charging of VAT on road haulage services are different from those of road passenger transport since, in the case of freight transport services, the headquarter or fixed office of the beneficiary, while in the case of transport of persons the place of transport is taken into account.

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