

## EXCISE LEVYING ON GOLD PRODUCTS ON THE ROMANIAN TERRITORY

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As regards the trade operations with gold products, the tax regime is rather special. The current paper tackles the most significant aspects of excise levying of this products/jewels type in the Romanian system. The focus is on certain framework elements regarding the fiscal status of the operator with gold products. The study relies on the European and national regulations but it also refers to other works which highlight similar problems.

*Key-words:* 14k gold, jewel transactions, fiscal regime, economic operators, excises

### INTRODUCTION

At the level of community fiscality, there is the Directive 2008/118/CE, that focuses on the general regime of excises in the Member States (MS) [1]. Its translation into the national legislation was performed by the enactment of the Government Emergency Ordinance no. 109/2009 for the modification of the Fiscal Code. The new Act changes the monitoring and control principle of the intra-community circulation of the deferred duty payment products through the implementation of the electronic system (EMCS – Excise movement control system). Since Romania is one of the initiating MS for the EMCS implementation, the associated activities started on January 1st 2008. Subsequently, the “phase 3” was implemented, comprising the development of specific applications revised by the MS administrations and the conformity testing. In a nutshell, as regards excises, beyond the simplification of administrative procedures (due to EMCS), the Ordinance we are mentioning brings some much needed clarifications [2]. Thus, it clearly defines the notion of economic operators who perform operations with excisable products (for example: “registered recipient”, “registered sender”) and re-defines “the moment of delivery for consumption” of the respective products. Then, it precisely defines the “excise tax payers” in the case of products subjected to the redeemed excises and it creates the legal framework needed for the introduction of the computerized system in order to facilitate and monitor the intra-community circulation of the deferred duty payment products (EMCS). As equally important are the establishment of procedures that must be used for the application of the computerized system, the introduction of the possibility

to split the responsibility of guaranteeing the default risk of excises which could become exigible and the establishment of excise regime for the deficiencies and losses of excisable products outside the deferred duty payment regime.

### RECENT ADJUSTMENT OF EXCISE REGIME IN THE ROMANIAN STATE

Given the difficult period generated by the economic and financial crisis as well as the need to increase the budgetary revenues [3], in 2013 certain legal measures were adopted, consisting in the expansion of the application area of non-redeemed excises for the aforementioned products (gold and/or platinum jewels, wedding rings not included). Thus, the Romanian fiscal Code [4] was modified for the third time in one year (2013) – through the Government Ordinance no. 16 [5], introducing new products in the category of excisable goods. The reason [6]: it was considered that during 2012 – 2014, the amounts for the state budget coming from this source were relatively low (Table 1).

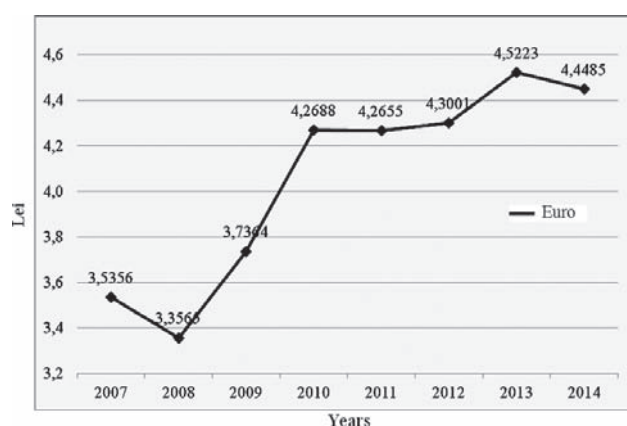
As a consequence, starting from September 1<sup>st</sup> 2013, excises have been also levied for gold and/or platinum

Table 1 **Structure of budget revenues, highlighting the total excise duties (mil. euro) [7]**

Specifications	Years		
	2012	2013	2014
National budget, <i>which:</i>	26 500,6	26 064,3	27 365,7
Profit tax	2 517,4	2 420,7	2 708,9
Income Tax	4 821,2	5 003,1	5 209,3
VAT	11 747,9	11 428,4	11 306,3
Excises	4 691,1	4 670,3	5 333,5
Customs duty	164,5	137,8	143,0
Other income	2 548,2	2 485,1	2 604,2
Amounts to be shared	10,0	- 81,1	60,5

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jewels (Code NC-7113-19-00), with the exception of wedding rings, and the level of excise is 1 euro/gram for the jewels up to 14k and 2 euro/gram for those over 14k. Here is aimed pointing that the level of budget cashings through this measure [6] is of only 56,2 mil. euro (0,03 % of GDP, in 2013) and 106,8 mil. euro (0,06 % of GDP, in 2014). Still, it is not out of the question that the application measure of the non-redeemed excises for certain luxury products, among which the gold/platinum jewels, may lead to the increase in the tax evasion in this field as well as to the increase in the number of companies which will choose to register in another country in order to avoid overtax [8]. During 2007 - 2009, the elimination of excises for jewels led to the decline of tax evasion from 80 %, as it was in 2007, to 40 % - as it was recorded in 2013. On another hand, the jewel market in Romania was situated in 2014 at only 35 % of the level it reached in 2007, before the start of the economic crisis. But what influences the amount of excise budget cashings, beyond the size of the transactions with gold products/jewels, is the exchange rate used for the calculation of excises (Figure 1).



**Figure 1** The evolution of the exchange rate (Lei/Euro) used for the calculation of excises [9]

At the level of the year 2013, the monthly average of total cashings from excises was approximately 400 million euros [10]. The excises levied in 2014 rely on an exchange rate of 4,4485 lei/euro, set by the Central European Bank (CEB), situated by 7,38 bani (1,65 %) below that of the year 2013, which was 4,5223 lei/euro. The reference exchange rate for excises set by the CEB is not at the same level as that of the reference exchange rate announced by the National Bank of Romania [11].

## THE OBLIGATIONS OF THE ECONOMIC OPERATORS WHO PURCHASE GOLD PRODUCTS FROM THE MS

In compliance with the act no. 209 from the fiscal Code [4] the excise payers for gold products (jewels) are the economic operators – legal persons, family associations and certified natural persons – who produce or purchase such goods from the community or extra-

community territory. The operators' activity has a special fiscal regime [12], justified especially by Romania's adherence to the EU.

## The fiscal registration of operators

The companies that purchase from the community territory gold products (jewels), before the reception of the products, must be registered at the appropriate fiscal authority, under the conditions specified by the fiscal law regulations [13,14]. An economic operator specialised in this field cannot receive the products subjected to the excises in a certain location if he does not prove its registration to the territorial fiscal authority [15]. In a concrete manner, the registration of economic operators who purchase from the MS the above-mentioned products is performed at the territorial fiscal authority where they are registered as tax payers [16]. Then, once registered, according to a special norm [17], an amended declaration will be completed and submitted every time the previously stated data change.

## The purchase of gold jewels from natural persons vs the excise regime

We frequently find on the market companies that purchase jewels from natural persons through a purchase order. This is a peculiarity in the sense that the raw material belongs to the client and the company records income from its processing. That is why we will refer to the manner of calculating the excises which are paid for the gold products produced [18]. According to the fiscal Code [4], for the *gold jewels*, the excises are levied only once and are calculated by applying fixed amounts on the measuring unit on the quantities produced on the Romanian territory, imported or purchased from the MS. The excise payers for such products are the economic operators who produce, purchase from the community area or import these goods. The establishment of the exigibility time for excises is different and occurs as follows [18]:

- for those derived from the domestic production, at the selling moment of those respective products on the domestic market and it is performed by the producers;
- for those derived from intra-community purchases, at the reception moment of those respective products being performed by the buyers;
- for those derived from the extra-community area, at the moment of the formalities of release into free circulation of those respective products being done by the importers.

If a company receives for processing gold jewels from the clients who wish their transformation also into jewels and it does not become the owner of the raw material serving for the manufacturing of the new jewels, we do not deal with the jewel production in the sense described above. The new jewels are made from the cli-

ent's gold who preserves his ownership rights, therefore there is a service provision whose aim is not represented by a sale performed by the company that made the respective jewels. In exchange, if the new jewels are sold to the clients, under the conditions of the (Romanian) civil Code [19], there is the obligation of paying the excises to the state budget. In other words, if the operator uses gold components (purchased from natural persons) in his own production ending in gold jewels (code NC-7113-19-00) intended for sale, then he has to levy excises for the products made.

## CONCLUSION

Romania has adopted all the community norms as regards excises, in order to avoid the start of the "infringement" procedure by the EC and implicitly, the elimination of the risks to suffer from punitive measures. It is good to mention that currently, the provisions for the profit tax, VTA and excises meet 100 % the community acquis. As we also showed in the paper, this implies a rigorous regime – related to the financial, fiscal and accounting aspects – of the transactions with gold and/or platinum products/jewels (Code NC-7113-19-00), with the exception of wedding rings. But, such a regime that we consider a special one, affects the amount of the transactions performed by the authorised operators and the principle "high tax = modest profit" comes into play. Moreover, at macroeconomic level, in the context described above, there is also a decline in the state budget cashings since the revenues collected from excises are rather small (0,06 % of GDP, in 2014).

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**Note:** The responsible for English language is Maria-Silvia Bilasevski, Iași, Romania.