Exchange of agricultural land and the law 17/2014 – between optimization and the risk of requalification

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Law No. 17/2014, updated by Law No. 175/2020, strictly regulates the sale of agricultural land located outside the built-up areas of localities.

In the case of a sale of such land, there are statutory preemption rights for certain categories of individuals (tenants, neighbors, the state, etc.) benefit from statutory preemption rights. These parties therefore have priority if the owner intends to sell, meaning they can opt to acquire the property on the same terms as the potential buyer within a specified period. The general rule is that the transfer of ownership of such land can only take place after a procedure for public notification of the offer, which allows the entitled parties to exercise their preemption rights.

Violations of this rule lead to absolute nullity.

Exchange as Optimization of Agricultural Investment Projects

From an investment or agricultural perspective, cultivating a specific plot of land may offer better yields than another (e.g., land previously owned). An exchange allows for a quicker and easier adjustment of the land portfolio to actual economic needs compared to a purchase, as it is not subject to Law No. 17/2014, and thus the procedure for informing preemption rights holders is not applicable.

Although the Romanian Civil Code (Art. 1763–1765) stipulates that the provisions on sales also apply to exchanges, this contract has its own legal nature: each party transfers an asset and receives another asset in return, without a monetary price being agreed. For this reason, part of legal doctrine and practice holds that Law No. 17/2014 applies exclusively to sales, not exchanges.

Case law generally confirms this view, and has ruled that exchanges do not fall within the scope of the special law on pre-emption, since the preemption right is linked to the presence of a price and a sales offer. This is further supported by the fact that Law 17/2014 is a special law and, as such, must be interpreted strictly, so that the pre-emption right cannot be extended to other forms of transfer of ownership outside of sales.

Exchange with Compensation Payment

Difficulties arise with exchanges involving a compensation payment (Romanian: sulta) – a sum of money paid to offset any differences in the values of the exchanged properties. The Civil Code allows such compensation payments; however, if the amount is disproportionate or even exceeds the value of one or both of the exchanged goods, legal doctrine considers this essentially a disguised sale.

Although there is no explicit case law ordering the reclassification of such an exchange with excessive compensation as a sale, other instruments of the Civil Code make this possible: the reclassification of a legal act according to its true nature and claims of simulation (Art. 1289–1290). If it is determined that the true intent of the parties was a sale for money, the transaction may be treated as a sale and thereby fall under Law No. 17/2014. Moreover, the principle of good faith, enshrined in Art. 14–15 of the Civil Code, prohibits abuse of rights. Using an exchange agreement to conceal a sale may be regarded as a simulation or as a legal transaction with an unlawful or illicit cause.

In such cases, preemption rights holders or authorities may assert the absolute nullity of the transaction, leading to the reversal of the deal. From a tax perspective, such a reclassification could also trigger the application of an 80% tax on resales made within 8 years of acquisition – turning the apparent advantage into a significant risk.

Conclusion

The simple exchange of agricultural land located outside built-up areas without a price generally does not trigger preemption rights under Law No. 17/2014. An exchange with a reasonable compensation payment may, in some cases, still be considered as such. However, once the price element becomes dominant and the compensation payment significantly exceeds the value of the more valuable property, there is a real risk that the transaction will be classified as a sale – with all the corresponding legal and tax consequences.

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