

THE VAT SCHEME UPON COLLECTION – ADVANTAGES AND DISADVANTAGES FOR ROMANIAN COMPANIES

MARUȘA BECA
BUCHAREST ACADEMY OF ECONOMIC STUDIES
6 Piața Romană, Bucharest
marushabk@yahoo.com

Abstract:

This article presents the provisions, the main advantages and disadvantages of the VAT scheme upon collection, adopted by the Romanian Government in order to help the economy and to collect more money to the state budget. The VAT payment to the state budget upon collection was requested frequently by businessmen, and over the years there were some other legislative proposals such as this that never materialized. According to the VAT scheme upon collection, the firm that issues the invoice will pay the VAT only when collecting, and the firm that receives the invoice may deduct VAT only on the payment moment.

Key words: VAT scheme upon collection, Romania, SMEs, fiscal policy

JEL classification: E62, G38, H25, H26

1. Introduction

In Romania, the VAT scheme upon collection will be applied starting the 1st of January 2013, together with the current VAT system. The VAT scheme upon collection will be applied only by those firms that have the headquarters in Romania and a turnover that not exceeds 2,25 million lei (500.000 Euros). [2]

The International Monetary Fund (IMF) agreed with the measure regarding the payment of VAT at the payment of the invoice.

The safety elements for this measure were presented to the IMF experts, namely the payment of the invoice only by bank transfer, the fact that the VAT reimbursement is made only when the payment is been proved (payment order) as well as the fact that between the 475,000 firms that benefit from this measure and the Financial Administration there is a safety filter, i.e. the 40 banks in Romania through which the payments are made.

The mechanism for the application of the measure was presented to the IMF experts, which will be detailed in norms regarding the implementation of the ordinance that will modify the Fiscal Code. Thus, there are two more deadlines introduced, of 90 and 30 days respectively. Concretely, after 90 days, the VAT is paid by firm A, even if it did not collect, and the other company may deduct VAT. After 90 days there is another deadline, of 30 days, so that, if the payment was not made, the VAT paid by the firm can be compensated with other payment obligation of the state, and the big firm that deduced its VAT will have a payment obligation.

The VAT scheme upon collection helps the SMEs that paid the VAT without having received the payment for their invoice that could affect their cash flow. The VAT scheme upon collection will be applied in the case of firms with a turnover that not exceeds 500,000 euro, with the condition that the payments are made by bank transfers.

The IMF officials agree with the Government's plans to charge the VAT on the invoice settlement, but they argue this should be made in a differential manner, namely

the move should be implemented only for those, which are very much affected, such as the SMEs, while the big contributors should not be included in this move. [5]

2. The Ministry of Finance official's vision regarding the VAT scheme upon collection

The law draft concerning the VAT scheme upon collection, agreed with IMF and EU was adopted by the Government and it will take effect from the 1st of January 2013.

The VAT scheme upon collection will be applied by the firms with a turnover in the previous calendar year does not exceed RON 2,250,000, with the condition that the settlements of the invoices to be done only by bank transfer. About 475.078 firms can pay the VAT only upon collection and not when the invoice is issued, as it is now done, provided the transaction to be made by bank or by credit card. The cash payment is not allowed. „A 24% cash tax is introduced that will bring to light a part of the underground economy”, (Voinea, L.).

Documentation files in English were presented to the IMF experts that included the safety elements of this measure, for example the invoice payment will be done only by bank transfer, the VAT refund will be done only by proof of payment, and between the firms and the taxation authorities there will be a primary safety filter - 40 banks from Romania through which the payments can be made. On the other hand, the Ministry of Finance restricted to 120 days the maximum payment day of an invoice. "Two due dates were set, of 90 and 30 days. After 90 days, the VAT must be paid by the firm A, even if it did not collect the money, and the other firm may deduct the VAT. After the 90 days, there will be another term of 30 days so, if the invoice payment was not done, the VAT paid by the small firm may be countervailed with other payment obligations, and the deduced VAT at the big firm re-converts to a payment obligation" (Voinea, L.).

The VAT scheme upon collection will bring 100 million lei in advance to the budget monthly (Voinea, L.). "The 65.000 firms with a turnover that does not exceed 500.000 Euros, that have contracts with the state, have to pay VAT monthly to the state, amount that reaches 71 million lei. This represents only 11% from the total value paid by all the firms in the contracts with the state, because there are small firms as neighbourhood pharmacies that pay 9% VAT on medicine", (Voinea, L.). But there is a potential gain from the implementation of this measure that comes from the retail area. "A small firm that sells its products through the large retail chains collects the money with a delay of 3-4 months after the products were sold. In this moment, the big firm deducts VAT when receives the invoice from the little merchant and collects VAT from the population at the time of sale. After the implementation of the VAT scheme upon collection, the big firm can not deduct any more the VAT from the National Tax Administration Agency, but only after the payment of the invoice. There will be a monthly earning from the VAT default of 170 million lei" (Voinea, L.). [1]

3. Provisions related to the VAT scheme upon collection

Chargeability occurs upon the date of collecting the total or partial value of the supplies of goods or services in the case of taxpayers registered for VAT purposes in Romania and having the seat of its economic activity in Romania, whose turnover in the previous calendar year does not exceed RON 2,250,000.

Furthermore, the VAT chargeability upon collection date applies to taxpayer persons registering for VAT purposes in the current year, as well as in case of taxpayers who did not apply the VAT scheme upon collection during the previous year, but who exceeded the threshold of RON 2,250,000 during the current year.

The turnover for computing the RON 2,250,000 threshold is made up of the total value of the supplies of goods or services, VAT exempt with deduction right, as well as of the operations for which the place of supply is deemed to be located abroad, realized during one calendar year.

If the taxpayer failed to collect the counter value of the invoice issued within 90 calendar days as of issue date, the VAT chargeability occurs on the 90th calendar date as of issue date of the invoice.

It is mandatory to apply the VAT scheme upon collection. The VAT scheme upon collection cannot be applied by taxpayers who are part of a sole tax group.

Furthermore, certain operations, such as e.g. supplies of goods or services which are exempt from VAT, supplies of goods or services between related parties or supplies of goods or services paid in cash are excluded from the application of the VAT scheme upon collection.

Specific rules have been set in the case of invoices issued by taxable persons prior to entering/exiting the VAT scheme upon collection, as well as in the case of adjustments of the taxpayer amount.

The beneficiary of the supplies of goods or services for which the VAT scheme upon collection was applied may benefit from the right to deduct the related VAT not earlier than the date of VAT payment to its supplier/provider.

Furthermore, the VAT deduction right in the case of acquisitions made by a taxable person applying the VAT scheme upon collection will be postponed up to the payment of VAT to its supplier in relation to the goods or services supplied, with certain exceptions.

The Register of taxable persons applying the VAT scheme upon collection has been introduced. Registration and deregistration is carried out by filing a relevant notice, except for taxable persons registered for VAT purposes over the current calendar year, who are automatically registered as of VAT registration date. [4]

4. Main advantages of the VAT scheme upon collection

This measure could bring a breath of oxygen for the firms that have cash problems and in the case of SMEs could even make the difference between bankruptcy and continuing the business activity. On the short term, there is a state revenues' decrease risk and it is necessary that the change to be agreed by the European Commission and the IMF. [6]

The VAT scheme upon collection brings several advantages to the Romanian state budget and economy.

- It brings to light a part of the underground economy. How? The firms will be discouraged to pay cash because they will not be accepted at the VAT deduction. "It equals the introduction of a 24% tax on cash" (Voinea, L.).
- The fictive invoices are eliminated. "The refund will not be done till the bank payment proof is shown. If you want to spike the state with 100 million lei, first you must pay 150 million. Moreover, 40 banks interpose that must check every transaction over 10.000 Euros" (Voinea, L.).
- It lets money to small firms, taking into consideration the fact that the credit facility is greatly reduced.
- The money return to the economy. After some months of implementation the payment term will decrease between private firms, otherwise they can not deduct VAT. The government decision will be mandatory, not optional. [1]

5. Main disadvantages of the VAT scheme upon collection

Emilian Duca, fiscal consultant, Ph.D. in Economics and CEO of the firm Tax & Business Solutions presented the main disadvantages of the VAT scheme upon

collection, implemented from the 1st of January 2013 for the firms with a turnover that not exceed 500.000 Euros.

The disadvantages presented by Emilian Duca are the following:

- the firms with the turnover that does not exceed 100.000 Euros are not affected, taking into consideration they pay the VAT quarterly, so they already benefit from the grace period of 90 days that grants the VAT scheme upon collection (after the 90 days from the issue date pass, the VAT must be paid even if the invoice is not collected)
- the measure is meant to strengthen the financial discipline and the carousel fraud (the intra-Community transactions where “ghost firms” are interposed). But the first one that does not pay its liabilities on time is the state itself
- the big firms may not want to change their software and they may start working only with big firms that do not enter into the VAT scheme upon collection, by eliminating from contracts the firms that participate to the system
- the time till the complex measure entries into force is too short, and the new software is expensive
- the firms that evade the Romanian state are not affected because they do not work with invoices
- the VAT scheme upon collection is mandatory in Romania, but in other countries firms can choose the VAT treatment. [7]

The disadvantages presented by the audit firms:

"Concerning the implementing rules for the VAT scheme upon collection, the project entails additional rules to the regime implemented by the Government Ordinance no. 15/2012 for the Fiscal Code change. According to the ordinance provisions, a cash partial payment resulted in the normal VAT treatment concerning the right to deduct VAT and not in the special rules of the VAT scheme upon collection. The Fiscal Code provisions' understanding is ruled out by the implementing rules", (Anghel, D., fiscal consultancy partner at PwC).

"This will mean a lack of predictability upon the VAT due to the state budget with additional costs from interests and penalties of delay for late VAT collection by the supplier, although the delay does not depend on his will", (Anghel, D.).

The implementation of the system is mandatory for the eligible taxpayer, which is not the case for other EU member states, as United Kingdom, that implemented a similar system. "The new provisions were meant to bring advantages only to the small firms regarding cash flows. For some practical aspects regarding the quick implementation of the VAT scheme upon collection there will not be enough time to prepare, unlike other EU member states that granted implementing time for taxpayers one year or more". (Jurubiță, R., tax partner KPMG).

The taxpayer that will not apply the system will have an additional burden, i.e. to check monthly the taxpayer register of those who apply the system, in order to establish, for each transaction, if the right to deduct VAT arises under the normal rules (in the case of the invoices received from the eligible taxpayers who do not mention on the invoice the requirement "VAT upon collection"), (Jurubiță, R., KPMG).

Regarding the VAT scheme upon collection remains unclear the problem of the correlation between the VAT Return (there will not be important changes) and the Informative Statement 394 that must be adapted in order to reflect the VAT scheme upon collection implementation (Sava, N., senior manager Indirect Tax at Ernst&Young).

The taxpayers must know very well their suppliers and follow the register in order to check if the supplier that issued the invoice is obliged to apply the system even if on the invoice does not exist any kind of reference to the VAT scheme upon collection", (Sava, N.).

The VAT journals (for acquisitions, for all the taxpayers and for the sales, for the taxpayers who apply the VAT scheme upon collection) must be adapted in order to include new information, relevant to the implementation of the VAT scheme upon collection, such as the documents' date, the taxpayer base and the VAT for which the chargeability appeared and the VAT that remains not deductible (Sava, N.).

"The invoices for which the VAT is not deductible entirely or partially will be taken in the journals prepared for the next fiscal periods till the VAT amount will become demandable. The VAT journals' models are up to the taxpayers, as there are not standard forms, but they must contain the necessary information required by the implementing rules of the Fiscal Code." [2]

Conditional reprieve from tax payment

The new legislative change has a disadvantage by establishing a fixed term till the VAT payment to the state is postponed, even if the amount for the delivered goods/provided services is not collected, so the VAT chargeability for the uncollected receivables appears in the 90th day from the deadline required by law for the issue of the invoice.

In order to help for real the business environment and small companies, it would have been desirable that the new legislative change to provide the VAT payment at the invoice collection, whatever the collection date would have been. Only a conditional reprieve for the VAT payment it is granted if small companies fail to recover the outstanding debts before the deadline of 90 days from the issue of the invoice. As a consequence, on small companies will hover further risk of default and will result in unpaid delivered goods/provided services, and loss of the amounts that the state will credit as a VAT payment form.

The VAT obligation for payment can cause the firms' insolvency, if its clients will not pay the outstanding invoices. The state will not lose anything. So, there is a possibility to eliminate the small firms from the market by unpaid bills taking into consideration they are required to find funds in order to pay the VAT even if they did not collect their own receivables.

The firms remain threatened by the risk of financial collapse

Another disadvantage is the threshold up to which the VAT scheme upon collection applies this measure that favours only the small firms with the turnover that does not exceed 2.250.000 lei. All the other firms, that pay large amounts to the state budget, are not supported by the new change. In many cases such firms have as debtor the Romanian state that does not pay on time.

The new measure helps the Romanian economy in a small proportion, taking into consideration that it takes out from applicability the most important tax payers who support the national economy (Pârvulescu, A., associate - lawyer, Olteanu&Asociații)

90 days from the invoice's issue date is the term that the state charges VAT, even if the collection has not been done. [3]

6. Conclusions

The effects of the VAT scheme upon collection implementation are still very controversial, the Ministry of Finance officials' intention is clearly to help the Romanian economy and to have more receivables to the state budget in order to overcome the crisis and the deficit. There are already some voices that say this measure has more disadvantages than advantages for the Romanian companies and an unstable fiscal policy will not help the economy because the investors tend to direct their capital to more stable countries.

The complexity of this measure due to its exceptions and other provisions determine additional implementation costs for the Romanian firms causing lack of competitiveness.

I believe that the main advantage of the VAT scheme upon collection shows up at the macroeconomic level because it reduces the tax evasion and so it brings more money to the state budget. This could lead to other positive effects to the economy and to the SMEs indirectly.

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