

VAT COLLECTION TO COLLECTION: ADVANTAGES AND DISADVANTAGES

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ABSTRACT: *This paper presents the major changes in the payment system of value added tax (VAT). Through the Government Ordinance no. 15/2012 amending and supplementing Law no. 571/2003 regarding the Fiscal Code, there was introduced, with effect from 01.01.2013, the payment of the value added tax (VAT) on cashing the whole or partial counter value of the supply of goods or provision of services. There are detailed the most important data on the topic, but also information about the risks and benefits resulting from the new legal provisions.*

KEY WORDS: *delivery of goods; service provisions; taxpayer; VAT; turnover; deductibility.*

JEL CLASSIFICATION: *E62; F65; H32; H25.*

The legal provisions on VAT collection to collection mandatory applies to:

- taxpayers registered for VAT purposes, who have their headquarters in Romania and whose turnover in the previous calendar year do not exceed the 2,250,000 lei limit. These individuals were required to file a notice to the competent tax authorities until October 25th, 2012 in order to be registered in the Register of persons applying VAT collection.

If on January 1, 2012 these people are not registered anymore for VAT purposes (e.g. they are abolished or inactivated), or join a tax group, they will no longer be recorded in the register of the taxpayers who apply the VAT collection system.

Taxpayers who have registered for VAT purposes after the 1st of October 2012 will apply the general provisions (the turnover from the previous year) from Article 134² paragraph (3) letter a) and Article 156³ paragraph (11), respectively they will submit a notification until the 25th of January 2013 unless they have exceeded the limit

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of 2.25 million lei in 2012 and will apply the VAT collection system starting with the 1st of February 2013, those who have the month as a fiscal period or starting with the 1st of April 2013, those whose fiscal period is the trimester.

The taxpayers who were removed from the records of the persons registered for VAT purposes according to Article 153 paragraph (9) letter. a)-e) of the Tax Code and the VAT registration occurs after October 1, 2012, shall submit a notification until January 25, 2013 unless they have exceeded the limit of 2.25 million lei in 2012 and will apply the VAT collection system starting with February 1, 2013, those whose tax period is the month, or starting with April 1, 2013, those whose tax period is the trimester. There are not included in the calculation of the limit achieved during 2012, the deliveries / supplies made during the period the person did not have a valid VAT code.

- Important: The system is applied until the overcoming of the limit.

- taxpayers who have their headquarters in Romania and are registered for VAT purposes in the current calendar year, starting with the date when they were registered for VAT purposes

The taxpayer who last year did not applied the VAT system to collection, but whose turnover for the respective year is less than the 2,250,000 lei limit, applies the VAT system to collection starting with the first day of the second fiscal period of the year following that when he did not exceed the limit, unless the taxpayer is registered in the Registry Office of the taxpayers who apply the VAT system to collection and who apply the system starting with the date specified in the registration decision in the register.

After the 1st of January 2013 the following categories of taxpayers will not make notifications, but they will be recorded ex officio by the competent tax authority in the book of the persons who apply the VAT on collection:

- ✓ Taxpayers who register as VAT payers within the year in accordance with Article 153 paragraph (1).
- ✓ Taxpayers who are removed from the records of the persons registered for VAT according to Article 153 paragraph (9) letter a)-e) of the Tax Code and reregistered for VAT purposes. There are not included in the calculation of the limit, the deliveries / supplies made during the period the person did not have a valid VAT code.

For example, a taxpayer applies the VAT collection system on the 1st of January 2013 and has as a tax period the trimester, but in the second trimester of 2013 he/she exceeds the limit of 2.25 million lei.

Therefore he/she is obliged to submit a notification in order to exit the system on July 25, 2013, and he/she will not apply anymore the VAT collection system from the first day of the second fiscal period following the one when he/she exceeded the limit, respectively from the 1st of October 2013.

If in 2014 this taxpayer will not exceed the limit of 2,250,000 lei, starting with 2015 he/she will get back under Art. 1342 paragraph (3) a) and will submit a notification according to Article 1563 paragraph (11) on the 25th of January 2015 in order to join the VAT collection system starting with April 1, 2015, if he/she has the

trimester as a fiscal period, or starting with February 1, 2015, if he/she has the month as a tax period

If during the current calendar year, the turnover of the taxpayer whom the VAT collection system is applied to exceeds the threshold of 2,250,000 lei, the VAT collection system is applied until the end of the fiscal period following the one in which the threshold was exceeded.

The VAT collection system applies only for the operations for which the delivery location or the place of supply is deemed to be in Romania.

The VAT collection system does not apply to taxpayers who are part of a single tax group. Single tax group is considered a group of taxpayers established in Romania who, being independent from the legal point of view, are in close relationship with each other from the organizational, financial and economic point of view.

The VAT collection system does not apply for the following operations:

- ✓ Delivery of goods / provision of services for which the beneficiary is required to pay the tax according to the tax code;
- ✓ Delivery of goods / services which are exempt from VAT;
- ✓ Operations subject to special arrangements for travel agencies, special scheme for second-hand goods, works of art, collection and antiquities;
- ✓ Delivery of goods / provision of services whose counter value is collected, partially or totally, with cash by the taxpayer eligible to applying the VAT system on collecting from legal persons, natural persons registered for VAT purposes, authorized persons, freelancers and associations without legal personality;
- ✓ Delivery of goods / provision of services for which the beneficiary is an affiliated person to the supplier / provider.

Legal provisions regarding the postponement of the deduction right connection with transactions subject to VAT collection, according to Art 145.

- ❖ The right to deduct the VAT on purchases made by a taxable person to a taxable person applying the VAT collection system according to art. 1342 paragraph (3) - (8) is postponed until the tax on goods and services that have been delivered / rendered was paid to the supplier / provider.
- ❖ The right to deduct the VAT on purchases made by a taxable person applying VAT collection system according to art. 1342 paragraph (3) - (8) is postponed until the tax on goods and services that have been delivered / rendered was paid to the supplier / provider even if part of the operations made by the taxpayer are excluded from applying the VAT collection system according to art. 1342 paragraph (6). These provisions do not apply to the intra-community acquisitions of goods, to imports, purchases of goods / services for which the reverse taxation is applied according to Art. 150 paragraph (2) - (6), art. 1523 paragraph (10) or art. 160.

The VAT chargeability occurs only when the counter value for the delivery of goods or provision of services is totally or partially collected, but no later than 90 calendar days from the invoice date, respectively for the situation when the invoice was not issued within the legal term, no later than 90 calendar days calculated from the deadline required by law to issue the invoice.

The right to deduct VAT on purchases made by a taxpayer from a taxpayer who applies VAT collection system is delayed until the payment of the supplier / provider's invoice, unlike previous legislation which provided the VAT at the time of invoice.

Thus, taxpayers will be required to justify the payment of their bills to their own suppliers in order to obtain VAT refunds.

The persons who are obliged to apply the VAT collection system will exclude from applying the VAT collection system the following operations which are subject to the general rules concerning the VAT eligibility of VAT - Article 134² paragraph (6):

- Operations for which the place of delivery, according to Art. 132, or the place of the provision, according to Article 133, are not considered to be in Romania (not taxable in Romania).
- Supplies of goods / provision of services for which the beneficiary is a person liable for tax payment according to art. 150 paragraph (2) - (6), art. 152³ paragraph (10) or Article 160;
- Supplies of goods / provision of services which are exempt from VAT;
- Transactions subject to special arrangements provided in Art. 152¹ - 152³;
- when the counter value of the supply of goods / provision of services is collected, partly or totally in cash by the taxpayer eligible to apply VAT collection system from legal persons, persons registered for VAT purposes, authorized individuals, free lancers and unincorporated associations. In case after the invoice was issued its total or partial counter values is collected in cash, for the tax of these sums the eligibility rules provided by article 134² paragraph (1) and (2) letter a) are not applied;
- Supplies of goods / provision of services for which the beneficiary is not a person affiliated to the purchaser / supplier in accordance with Article 7 paragraph (1) Section 21.

For these operations there will not be mentioned on invoices *VAT on collection*.

For the other performed operations they will apply the VAT collection system and will mention on invoices *VAT on collection*.

Supply of goods / provision of services whose counter value is collected partially or totally in cash by the person eligible to apply the VAT collection system from other categories of beneficiaries than those referred to in article 134² paragraph (6) letter d) of the Tax Code, are exempted from applying the VAT collection system.

The sums in cash deposited by the beneficiary directly into the provider's / supplier's bank account are not considered revenue / cash payments.

According to article 134² paragraph (6) letter d) of the Tax Code, the supplier / provider who is obliged to apply VAT collection system, exclude from the VAT collection system those amounts from an invoice which are not collected in cash from legal persons, individuals registered for VAT purposes, authorized persons, freelancers and unincorporated associations (the partial collection in cash of an invoice system is not excluded from applying the system to the entire invoice).

In case the invoice's counter value is collected in cash, according to art. 134² paragraph (6) letter d) of the Tax Code, the supplier / provider who is obliged to apply the VAT collection system, excludes from applying the VAT system in collecting those amounts from an invoice which are collected in cash until the day of invoice, inclusively legal persons, individuals registered for VAT purposes, authorized persons, freelancers, self-employed and unincorporated associations.

For any differences unpaid until the date of invoice, the supplier / provider applies the VAT system on collection and enrolls the mention referred to in art. 155 paragraph (19) letter p) of the Tax Code unless the supply / provision falls into another excepted category provided by article 134² paragraph (6) of the Tax Code.

Example:

Company A, which applies the VAT system on collection, supplies spare parts worth 1000 lei to Company B on March 12, 2013. The invoice 1,000 lei plus 240 lei VAT, is issued on March the 12th, by which time the company has already received 500 lei in cash from company B.

On the issued invoice, Company A will state separately the amount that was collected in cash and the VAT, respectively 403 lei plus 97 lei VAT which the normal rules for charging is applied for, and separately the difference of 597 lei plus 143 lei VAT next to which it is mentioned "VAT on collection".

If on April 20, 2013 Company B will make another payment in cash of 300 lei, for company A the liability of the VAT for this amount collected in cash, namely 58 lei occurs on April 20, 2013.

At Company B chargeability to tax for the this payment occurs also on April 20, 2013, respectively B will deduct the 58 lei VAT worth in the deduction for April 2013.

This may be a premise situation of a financial imbalance, in the sense that the company is obliged to pay its suppliers in order to deduce the VAT even if it did not cashed the invoices issued to customers.

In addition to this, at the end of the 90 days term envisaged by law, the Company is obliged to pay the VAT to the state for the unpaid invoices.

So, the question is where you can get the finances necessary to the payment of a double bond, the one to the supplier and the one to the state, given that the company has not cashed its own claims, because there is only one step to insolvency.

Additional costs for taxpayers

The implementation of the VAT collection system will generate for taxpayers additional costs determined by the changing of the information system and increasing the complexity of the accounting operations necessary to separately highlight the issued invoices and those not collected in terms of VAT.

In fact, I think that in this case, it will be obligatory to keep two separate book keepings: the one connected to the issued invoices and the one connected the cashed invoices, which must be separately reported.

Regarding the turnover for calculating the legal limit of 2,250,000 lei, this one consists of the total value of the delivery of goods and provision of services taxable and / or exempted with deduction right, as well as of operations resulted from economic activities for which the place of delivery / supply is considered to be abroad, made within a calendar year.

In 2013, the taxpayer who has established his business in Romania and whose turnover between the 1st October 2011 and including the 30th of September 2012 does not exceed the limit of 2,250,000 lei, will apply the VAT collection system starting with the 1st of January 2013 .

For this purpose, the taxpayer who would apply the VAT collection system starting with January the 1st, 2013 was required to submit to the competent tax authorities, until October the 25th, 2012 inclusive, a notification showing that the turnover achieved in the period between the 1st of October 2011 and the 30th of September 2012 inclusive did not exceed the limit of 2.25 million lei.

If case the person has not filed the notification, he/she office will be registered ex officio in the Register of the taxpayers who apply the VAT collection system until the 1st of January 2013 and going to apply the VAT collection system starting with the 1st of January 2013.

The taxpayers registered for VAT purposes, whose economic headquarters is in Romania, whose turnover in the previous calendar year does not exceed the limit of 2,250,000 lei and who must apply the VAT collection system are obliged to submit to the competent tax authorities until the 25th of January inclusive a notification stating that the turnover in the previous calendar year does not exceed the limit of 2.25 million lei.

The taxpayer who applies the VAT collection system and exceeds the limit of 2,250,000 lei the current calendar year, is obliged to submit to the competent tax authorities, until the 25th inclusive of the month following the tax period in which he/she exceeded the limit, a notification which shows the achieved turnover in order to change the applied system.

If we refer to the advantages and disadvantages for the companies that will apply the VAT collection system one can observe increased efficiency of their activities by correctly predicting cash and use of cash flow for new investments, which can boost the national economy.

Advantages in this respect may be visible only in a narrow sector of the economy, as companies applying the VAT collection system are part of the very small enterprises whose annual turnover does not exceed 2,250,000 lei.

All other small, medium and large enterprises with an annual turnover which exceeds the sum of 2,250,000 lei which represent the majority and which shed considerable sums from the state budget are not supported by the new amendment.

We also consider the situation where, very often, such companies have the state as a debtor, which does not pay on time, justified by insufficient funds to the budget.

Such a behavior correlated with the obligation to pay VAT on issuing the invoice, regardless of collection, can lead to a financial meltdown.

On this account, the new legislative measure, although it is intended to be positive, helps very little the Romanian economic space, considering that takes outside its applicability the major companies supporting the national economy.

In the future, it would be desirable for them to be subject to some favorable legislative measures on the fiscal account, knowing that in a shaky economy, burdensome taxation causes financial disasters.

The new legislative amendment proves its ineffectiveness also from the prospect of establishing a fixed term to practically delay the VAT payment, whether the counter value of the delivered goods / rendered services it is charged or not

In order to really help the business environment an the small entrepreneurs, it would be desirable for the new regulation to provide the VAT collection for cashing the counter value of the delivered goods / rendered services, regardless the payment moment.

But what really happens is only a granting of a grace period for VAT payment, this in case small entrepreneurs fail to recover the owing debts closer to the finish of the 90 days term from the issuing of the invoice.

Consequently, although the legislation framework is another one, the practical situations will not get another resolution other than the one under the empire of the old law, and small companies will risk the non-payment of bills, in which case the damage is focused on one hand on not cashing the price of delivered goods / rendered services, and on the other hand on losing the sums of money which will credit the state with under the VAT payment.

The obligation to pay VAT can generate company's insolvency in case its beneficiaries and clients do not pay the owing invoices, and the state will not lose anything.

Therefore it is really maintained the possibility of eliminating the small companies from the market by not paying the invoices, given that they are bound to find funds to pay the VAT, even if they have not received their claims. Short after its application, we will see if the new legal regulation will bring something positive to the national economy or will remain just a simple act.

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