

A New Approach to Understanding Value Added Tax

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Abstract

Fees appeared concomitantly with the state and developed at the same time with its evolution, representing the main source of cash income creation covering the sundries generated by the accomplishment of its services. Fees and taxes are aimed at orientating the economic agent in a direction that coincides with the interest of the community. The interest of the community is immediately satisfied partly by redistributing the GDP to which the economic agent has contributed.

Key words: VAT, excise taxes, turn over tax, VAT payers, ETS spirit

Introduction

The art of building up and using the fiscal instruments by the abilitated representatives of the state scarcely consists in finding those values of excise taxes and taxes that permit the maintenance of equilibrium between the possibility to maintain the economic agent's interest and the community's interest. In the general cadre of excise taxes are identified the general consumption taxes, from which is distingue with preeminence the Value Added Tax. Some precisions are needed, and we are going to present them below.

The turnover tax was experimented for the first time in the United States of America during the war of secession and in Romania was introduced through the fiscal reform promoted by Nicolae Titulescu in 1921, with a unique l quote of 1 % applied to the total business digit of any common or accidental business. Thus, from the point of calculus base, two forms of turnover tax have been identified.

The turnover brute tax applied on the value of every sold merchandise in which is included the paid tax by the supplier in the previous phase of the economic circuit. Practically the tax is stratificated, perceiving tax to tax.

The net turnover tax or the value added tax (V.A T.) was established for the first time in 1954 by Maurice Laure and nowadays it is applied in about 70 states. The value added tax is a general tax on the value calculated and applied during the whole circuit of transmission of possessions from the producer to the final consumer, being applied exclusively on the value resulted at the level of every stage, that is on the remain value after the deduction from the total value of the general value from previous stages. Although it is called tax, it acts like a veritable tax, having a neuter transparent and unique character, and being applied only in the country where the possession in consumed or the service, after case, is performed.

The frequent changes of the legislation concerning VAT prevented Romania from having a strong and rigorous system, which induce voluntary obedience to taxation from those who should pay, and do not permit an effective fiscal control. The boom and bust circle of the economy and the taxation structure has pronounced the methods for unauthorized procedures. All these things have led to the elaboration of forced and punctual procedures.

The Romanian integration in the Community have brought purposeful changes concerning the VAT, because now no longer exist custom's pikes between the member states, and our country must enforce the common law in taxation.

Privy in Romania in 1993, the VAT was elaborated on the VI European Directive structure, which put the base stone of the VAT in the European Union. But our legislation has not strictly followed this act, justifying that our country was a candidate state to the Union and not a member one. In 2001 our country engaged to harmonize our legislation about VAT in the Union system properly, as in Chapter 10 of negotiation – TAXATION.

About the VAT Laws

To harmonize the legislations related to the value added tax, member states of the European Union (EU) have built up a unitary system for the V.A.T., underlined on the dispositions of the Directives I and II or the European Commission, emitted on the 11th of April 1967, to which was added the Decision of the Council from the 21st of April 1970 for the replacement of financial contributions of EU member states with proper resources of the Community. These resources are corporate of the prelevations from the VAT realized by applying a unique tax, determined in the same way, in conformity with the rules established at community level.

It is worth mentioning that the European directives need to be transposed in the national legislation, and the European regulations are applied literally and directly on the adhesion date. In the VAT area the European directives as well as the jurisprudence of the European Court of Justice were transposed in the rules of the Fiscal Code, being specified that on the adhesion date the present legislation in the VAT area would be abrogated and replaced with the community acquis.

According to the Fiscal Code, the value added tax is an indirect tax to the state budget, which includes only those operations that fulfil the following *conditions*:

1. constitutes a delivery of possessions or a performance of services effected by payment;
2. the place of delivery of possessions or performance of services is in Romania;
3. the delivery of possessions or the performance of services is realized from an imposable person;
4. the delivery of possessions or the performance of services must be the result of the economic activity.

Economic activities contain producer, dealer or service performer services, including extractive activities, agricultural and free professions activities. Also the trading of the corporal or uncorporal possessions is an economic activity, with a view to obtain revenue with continuity character.

Inclusion in the activity of applying the value added tax, the delivery of possessions or the service performances, after case, must be made by payment, condition that involves the existence of a direct connection between the operation and the counterpart obtained. To determine if an operation can be placed or not in the area of action of the value added tax it must be established if this can bring an advantage to the client and the prize depends on the connection with the advantage received.

Concomitantly with the burning there appeared an important modification affecting all the contributors presently registered as VAT payers – the averting of the customs barrier, between the Community member states. It resulted in the free trafficking of possessions and service between member states. The notions of export and import have been replaced with new notions such as intra-communitary delivery (instead of export).

Therefore, every dispatch of possessions from Romania into another member state, even without a commercial transaction, is considered possessions transfer or non-transfer, new notions in the Romanian financial practice, but specific only to the relations between the member states. Possessions placed at present in suspensive custom regions that must be treated as non-transfers are an important matter.

Because custom barriers have been erased, movement control of possessions between members states is realized through the electronic system VIES (VAT International Exchange System). For example when an extra-comunitary acquisition is reported, it will be possible for providers that reported the extra-comunitary delivery to be checked upon, especially if they have a valid number given for VAT purposes in their member state and if the operation is declared in the respective state.

The novelty in this area is represented by the fact that, for intra-comunitary acquisitions, the economic operators registered for VAT purposes will not pay effectively, but they will apply reverse taxing, i.e. pay by means of VAT deduction. These are doubled by special laws for possessions that make the object of consignment contracts, possessions put at the client's disposition (call of stock) the possessions transmitted for conformity verification, for testing, for sampling triangular operations that involve economic operators in three different member states, have make the object of simplifying measurements established by an order received from the Ministry of Public Finances.

In the service performing area there appeared significant changes. Thus, a new notion appeared: that of intercommunity possessions transport, which is different from the international possessions transport performed between member states and non-member ones.

The international possessions transport is and will remain exempt from VAT, while the intercommunitary possessions transport is not exempt from VAT, but if the client transmits to the transporter a viable VAT code from any other state except Romania, from where the transport leaves, then the client will pay the tax in his country, and the Romanian transporter will get an invoice without VAT.

The new modifications of fiscal laws bring the implementation of some special regimes, such as: the special regime for the investment of gold, the special regime for second hand possessions, work of art and collection, the special regime for electronic services performed by persons who are not established in the Community for unchangeable persons established inside the Community.

To these are added a series of essential *modifications* for the VAT in the immovables area, such as:

- the leasing with immobile possessions will be exempt from VAT (with right of taxing option);
- the delivery of immobile possessions which are not new and the terrain which is not constructible, are exempt from VAT, but it is followed by the obligation of adjusting the right of deduction exerted for the respective immobile possession. The condition in which a construction is not considered new is established by the harmonized law application norm.
- the change of the initial immobile possession destination, respectively its utilization in a sector which gives deduction right;

- the measure from the initial deduction will be accompanied by the obligation of adjusting the deduction right over an adjusting period of time, which in Romania is of 20 years;
- there were introduced transitory rules specific to an area, because Romania didn't apply the VAT adjusting system than in the immobile possessions renting in VAT exoneration.

The application of the simplification of measurement for persons who opted for imovable operations taxing, which nowadays is known as reverse taxing, will continue after 2007. To this is added the elimination of an entire series of VAT exoneration incompatible with the communitary acquis.

Amongst the most significant is the elimination of VAT exoneration for: research development activities, the commission for merchandise exchange as well as the incomes obtained by the Societies of immovable values for administration and depositing of shares, participation titles, claims titles, operations financed from irredeemable given by foreign governments and international organizations, veterinary attendance.

Thus, the harmonized legislation includes a series of VAT exemptions like: the public services exemption, the deliveries of gold in the country by the Romanian Bank exemption, the leasing operations with imovable possessions exemption, the exemption for the sale of every kind of terrains except constructible ones, the exemption of VAT for the sale of constructions that are not new.

The special exoneration regime forecasts an exoneration of the value added tax which operates on the entire activity of the imposable person, irrespective of whether the operations made are taxable, exempted from deduction right, exempted without deduction right or operations that are not in the area of the value added tax application and the imposable persons registered as payers of the value added tax cannot apply the special regime of exemption.

There can be exempt from the value added tax the imposable persons whose annual digit declared or attained, is below 2 billion lei ceiling, designated exemption ceiling, but these can opt for the appliance of the normal regime of the value added tax. The imposable persons who overdo the exoneration ceiling during a fiscal year are obliged to solicit the registration as payers of value added tax in a normal regime, in ten years' time starting from the date of the overdo finding.

The imposable persons fiscally registered following the operation under the exoneration ceiling are considered as being under a special exoneration regime, if they do not choose to apply the normal regime of the value added tax. The newly-established imposable persons can benefit from applying the special exemption regime, if they declare that they will annually do a number of businesses estimated to 2 billion lei. And they don't choose to apply the normal regime of value added tax.

In the taxation base of the value added tax are *added* the following ones:

1. discounts, draws and other discounts given by the provider directly to clients;
2. the sums representing disadvantages established by the judge order and any other sums asked for partial or total unaccomplishment.

The base of taxation does not exclude any sums that, in fact, represent the countervalue of the delivered possessions or performed services:

1. the perceived rates for: delayed payments, deliveries with payment rate, leasing operations;
2. the value of the wrappers that travel between the merchandise providers and clients, by exchange without invoicing;
3. the sums paid by the provider or performer in the client's account are decent;

4. the advertisement and publicity and the hotel tax are perceived by the local public authorities through the performer.

The persons who are in a special exemption regime must keep the evidence of their possessions delivery and service performance that come under this article, with the help of the sales journal.

The harmonized legislation for the VAT is the legal base for calculating Romania's contribution to the communitary budget, the value added tax being one of the main resources of the calculation base of this contribution.

However, a question remains: is it possible to eliminate the VAT from the indirect fees applied on Romania's territory? And if the answer is affirmative, what is its effect on the public budget?

In the study "Factor four – the germination of prosperity by halving resources consumption" the authors suggested that Europe should adopt a slow modification of fees. The authors sustain that the first measure should regard the increase in the prices for energy and primary resources with about 5 % annually over a period of 20 years. Other sustainers of this theory are: Bob Ropeto and Roger Dower from World Resources Institute from Washington, Charles Ballard and Steven Medema from Michigan State University, who have studied the effects of "perverse fees".

For example, we will analyze a small part of the fiscal system in our country in order to identify a solution in ETS spirit.

Conclusions

It can be said that the VAT represents a double taxation by the state of other fees and taxes. For example, fees and taxes applied to salaries are taxed through the VAT salaries and sundries with salaries as the main source of forming the value added base.

On the whole, the existence of the VAT discourages the economic agents in raising the value added, and implicitly the salary fund (the number of wage earners and medium salary in the firm).

Thus, the economic agent will be discouraged to consume more and more elements of fund factor and implicitly of natural resources, with all the negative aspects that result from this phenomenon.

However, for a community whose objective is economic development, the appliance of VAT is not the happiest option.

This is one of the reasons why the authors of this paper do not agree to the economic policy of the states that use laborers' work and personal outcome as the main basis of taxing.

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O nouă modalitate de a înțelege taxa pe valoarea adăugată

Rezumat

Aderarea României la Uniunea Europeană a produs modificări profunde în ceea ce privește taxa pe valoarea adăugată (VAT). Prezentul articol face o scurtă trecere în revistă a acestor schimbări, reliefând aspecte importante în ceea ce privește înțelegerea VAT-ului. Deși VAT aduce la bugetul de stat sume importante, aplicarea acestei "taxe" produce și unele dezavantaje pentru agenții economici. Exonerarea de la plata acestui veritabil impozit indirect nu este, de cele mai multe ori, cea mai fericită metodă de stimulare a activității economice, VAT rămânând, alături de impozitul pe profit, venitul bugetar cel mai predispus către evaziune.