

THE ACCOUNTANT AND FISCAL POINT OF VIEW CONCERNING SOME OF THE TVA PAYING PERSONS OBLIGATIONS

Maria Sandu Ph. D
University of Craiova
Faculty of Economics
Craiova, Romania

Abstract: Any juridical persons as a person that pays taxes(and sometimes that does not pay taxes also) has the following obligations: the fiscal registration at the recognized territorial authority, the realization and the reception of the fiscal documentation, the registration of the operations and the TVA payment. Such obligations are mentioned in Law nr. 571/XII.2003, concerning the Fiscal code (Title VI), Government decision. nr. 44/I.2004, concerning the Rules of application of the Fiscal code and the Government decision nr. 92/XII.2003, concerning the code of fiscal procedure. During the last period, after the frequent changes that appeared in the Fiscal code there are a series of problems concerning the solution for such obligations. The present fiscal law mentions that the persons paying the TVA have to pay to the state budget the amounts representing the calculated tax on the invoiced work value.

It follows that the tax eligibility appears before the checking of the invoices sent by the tax payer, supplier, operation which, now on the background of the economic-financial crisis is not granted. On the present background of the mentioned crisis and thinking of the real situation of the too much delayed payments by the beneficiary and due to the budgetary arrears, it was decided that from the 1st of January 2013 the TVA should be payed at the moment of the checking of the invoice countervalue by the small tax payers(the business cipher does not go over the amount of 2.250.000 lei). Taking into account the wide area of this issue this article deals only with some aspects concerning the persons that are obliged to register with TVA, to keep evidences of the operations submitted to taxes, to organize the registration of those operations submitted to taxes and new aspects concerning the invoicing of those operations

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Concerning the issue in debate, during the last two years (2011-2012) frequent changes were brought to the Fiscal Code, which raise serious problems to taxpayers and not only.

The principle, regulated by the provisions of art. 153 from the Fiscal Code, is that any taxable person who has the place of economic activity in Romania and carries out or intends to carry out an economic activity which implies taxable operations and/or exempt from value added tax with right of **deduction must**

request the registration for VAT purposes at the competent tax body (named normal registration for tax purposes).

A taxpayer must register for VAT purposes in the following situations:

- a) When exceeding the exemption threshold of 220.000 lei, which is the equivalent in lei of 65.000 euro, upon registration or afterwards;
- b) By option, to apply the normal tax regime;
- c) When making an intra-community acquisition or intra-community services, when the legal threshold is exceeded (equivalent in lei of 10.000 euro).

1. TAX REGISTRATION OF TAXABLE PERSONS

a) before carrying out operations which imply VAT (art. 153, letter a) in the following cases:

1. if they declare that they are going to achieve a turnover equal to or higher than the exemption threshold regarding the special exemption regime for small companies (since July 1st, 2012, equivalent in lei of 65.000 euro, which means 220.000 lei; prior to this date the threshold was of 35.000 euro, respectively 119.000 lei);

Change to be noted: Since July 1st, 2012 (following the enter into force of Government Emergency Ordinance - O.U.G. - no. 24/2012) for the newly-established taxable person who starts an economic activity during a calendar year the exemption threshold is no longer determined proportionally to the period remaining from the establishment until the end of the year, but it represents the limit of 65.000 euro, respectively 220.000 lei.

2. if they declare that they are going to achieve a turnover lower than the exemption threshold, but choose to apply the normal tax regime;

It must also be remembered that the taxable person who falls under small companies which apply the special exemption regime, can choose anytime to apply the normal tax regime.

b) after establishment:

1. if they reach or exceed the exemption threshold within 10 days since the end of the month in which they reached or exceeded this threshold (art. 153, paragraph 1, letter b);

2. if the turnover achieved during a calendar year is lower than the exemption threshold, but they choose to apply the normal tax regime (art. 153, paragr. 1, letter c).

To remember that the above mentioned provisions also apply to the taxable person who exclusively carries out operations exempt from value added tax, but chooses for their taxation (art. 141, paragraph 3).

2. REGISTRATION FOR VAT PURPOSES OF OTHER PERSONS

- the taxable person who has the place of economic activity outside Romania, but is established in Romania through a registered office is required to apply for registration for VAT purposes in Romania as follows:

a) before receipt of services, if the person is to receive for the registered office in Romania services for which he/she is liable to pay VAT in Romania, if the services are supplied by a taxable person who is established in another member state;

b) before supply of services, if the person is to supply the services stipulated by law (art. 133 paragraph 2) from the registered office in Romania for a beneficiary

taxable person established in another member state who is liable to pay VAT in another member state, according to the equivalent from the respective member state legislation;

c) before carrying out some economic activities from the respective registered office involving certain operations provided by legislation.

- the taxable person who is not established in Romania nor registered for VAT purposes in Romania will request the registration for VAT purposes at the competent tax bodies for operations carried out on Romanian territory which give a right of tax deduction, others than transport services and their auxiliary services, exempt, before carrying out the respective operations, unless the person liable to pay the tax is the beneficiary;

- the taxable person not established in Romania and not registered for VAT purposes in Romania will request the registration for VAT purposes before carrying out the operations if he/she intends to:

a) make an intra-community acquisition of goods for which the person is liable to pay the tax;

b) make an intra-community delivery of goods exempt from tax.

The registration for VAT purposes of other persons who make intra-community acquisitions or for services.

The taxable person who has the office of economic activity in Romania and the legal non-taxable person established in Romania, not registered and who are not obliged to register, according to legislation, if:

- they make an intra-community acquisition taxable in Romania, before making the intra-community acquisition, if the respective intra-community acquisition value exceeds the threshold for intra-community acquisitions in the calendar year in which the intra-community acquisition takes place;

- they supply services whose place is in another member state, for which the beneficiary of the service is the person liable to pay the tax according to the equivalent from the legislation of another member state before supplying the service;

- they receive from a supplier, taxable person established in another member state, services for which they are liable to pay the tax in Romania, before receiving the respective services.

All these taxable persons referred to earlier, were registered by decision issued by the tax body.

Concerning the registration operation, it must also be mentioned that the person registered for VAT purposes must notify in writing the competent tax bodies regarding the changes of information mentioned in the registration request or provided by other means to the competent tax body, in connection with his/her registration or which appear in the registration certificate within 15 days since the occurrence of any of these events.

According to tax legislation, the competent tax bodies register for VAT purposes all the persons who are required to apply for registration. But if a person is required to register for VAT purposes and does not apply for registration, the competent tax bodies will register the respective person ex officio based on their own findings or at the request of another authority which administrates tax receivables. Thus, in the middle of year 2012, it was established the ex officio tax registration procedure or upon request of another authority which administrates tax receivables (see order 714/V/2012). According to this regulation, the format and content of two forms were approved: a) Decision regarding the ex officio tax registration and b) Notification regarding the ex officio registration.

3. CHANGES BROUGHT TO THE REGISTRATION PROCEDURE FOR VAT PURPOSES BY OPTION

During the studied period (years 2011-2012), the National Agency for Tax Administration (ANAF) changed four times the provisions regarding the registration procedure.

In this context, we mention order 1967/11.IV 2011, which regulated the new form concerning the Decision regarding the registration for VAT purposes valid: a) at the communication date of the approval decision of registration for VAT purposes, for taxable persons who request the registration for VAT purposes upon establishment; b) in the first day of the month following the one when the taxable person was informed about the approval decision of registration for VAT purposes, for taxable persons who, subsequently to their establishment, achieve a turnover lower than the threshold, but choose the normal tax regime.

Order 1100 from July 2012 brought amendments to order 1967/IV.2011, which refers: both to the validity of registration for VAT purposes, meaning that the registration for VAT purposes for the taxable person is considered valid beginning with the communication date of the approval decision of registration for VAT purposes for all taxable persons requesting the registration, and to the format of the registration decision.

According to the new procedure, a commercial company that wants to become taxable even since its establishment has the possibility to submit the registration request for VAT purposes in the same day of submitting the establishment file to the Registry of Commerce.

If the two operations are performed simultaneously, by submitting in the same day the documents for the company establishment at the Registry of Commerce and the registration request for VAT purposes at the administration, the tax authorities will be required to issue the registration certificate for VAT purposes in the working day following the one when the registration certificate from the Registry of Commerce was issued.

Therefore, this regulation represents an advantage, meaning that commercial companies which are established and want to be classified as taxable even since their registration at the Registry of Commerce, are no longer required to wait approximately 15 working days in order to carry out economic activities. In practice, it is possible to be difficult to meet this deadline.

Also, ANAF (National Agency for Tax Administration) order 1100/VII.2012 amended as well some provisions from the registration procedure for VAT purposes.

If, prior to the changes, the taxable person who requested the registration for value added taxes purposes submitted to the competent tax body the declaration of registration/amendments, having filled in the "Tax vector data" heading, section "value added tax", the new provisions (regulated by order 1100/2012) stipulate that a taxable person requesting the registration for VAT purposes must submit to the tax bodies more documents, as follows:

- the registration request for VAT purposes (form 098) accompanied by the documents required by the legislation in force, for taxable persons subject to registration at the Registry of Commerce and who request the registration for VAT purposes upon establishment [according to art. 153 paragraph (1) letter a) from the Fiscal Code];
- the registration declaration having filled in the "Tax vector data" heading, section "value added tax" for taxable persons which are not subject to registration at the Registry of Commerce and who request the registration for VAT purposes [according to art. 153 paragraph (1) letter a) from the Fiscal Code];

- the amendments declaration (form 010) having filled in the “Tax vector data” heading, section “value added tax” for taxable persons who request the registration for VAT purposes [according to art. 153 paragraph (1) letter c) from the Fiscal Code].

4. NEWS REGARDING THE INTRODUCTION OF SOME CONDITIONAL CRITERIA FOR VAT PURPOSES REGISTRATION

Since 2011 it was introduced the possibility to condition the registration for VAT purposes for taxable persons by fulfilling some criteria.

The competent tax bodies will establish, based on these criteria, if the taxable person justifies the intention and has the ability to carry out economic activity, in order to be registered for VAT purposes.

The Emergency Ordinance no. 117/2010, which entered into force beginning with year 2011, introduced in the fiscal code the provision regarding the setting of the criteria to condition the registration for VAT purposes of commercial companies with the place of economic activity in Romania, established under Law no. 31/1990 regarding commercial companies, which are subject to registration at the Registry of Commerce. In this context, we mention that, initially, this regulation was introduced by order 1984/May 2011, regulation which was amended in November 2011 by order 2795.

Criteria for conditioning the registration for VAT purposes include:

- submitting the form 098 and the Appendix attached to the application for registration for VAT purposes;
- supporting documents (certified copies of administrators' identification documents);
- documents on the legal ownership of space for headquarters and / or secondary offices;
- affidavit of administrators as they have not committed crimes and acts provided under GO 75/2001;
- is achieved by the tax authorities the documentary control based on the documents submitted or the fiscal body's own records;
- on-site verification of the existence of space for headquarters and / or secondary offices declared;
- verification of evaluation criteria and preparation by the fiscal body of a report that will determine the score obtained;
- issuing the approval or rejection decision within maximum 3 working days.

5. NEWS ABOUT CANCELLATION OF REGISTRATION FOR VAT PURPOSES, EX OFFICIO, OF THE TAXPAYERS IN SOME SITUATIONS

Given the need to clarify the tax treatment applicable to inactive taxpayers and those whose registration for VAT purpose was canceled, and the fight against tax evasion, was approved the Ordinance 125/27.12.2011. Therefore, from 1 January 2012, following the entry into force of G.E.O. no. 125/2011, there were changes (amendments) on the cancellation of registration for VAT purposes and re-registration, respectively, registration for VAT purposes if they ceased the circumstances that led to the cancellation of registration for VAT purposes (art. 153 , paragraphs 9 and 91).

The situations for cancellation of registration for VAT purposes, and re-registration for VAT purposes are:

a) if it is declared inactive (according to Art. 78¹ of the Government Ordinance no. 92/2003), from the date of declaration as inactive in the following situations:

1) do not fulfill, during a calendar quarter, no declarative obligation provided by law;

2) they avoid the tax inspection by declaration of fiscal domicile identification data which do not allow to the fiscal body its identification;

3) tax authorities found that it does not operate at the declared fiscal domicile.

According to order 3347/20.10.2011 (published in Official Gazette no. 754/26.10.2011) the cancellation of registration for VAT purposes of taxable persons shall be carried out ex officio by the competent tax authorities and the date of cancellation of registration for VAT purposes is considered the date when the taxpayer is declared inactive, respectively the communication date of the decision declaring inactivity.

What happens to taxpayers declared inactive, respectively beneficiaries of the goods purchased from them?

Taxpayers that have been declared inactive, doing business in the period of inactivity, are subject to the payment of taxes under the law but forfeit their right to deduct expenses and value added tax for purchases made during that period.

Beneficiaries that purchase goods and / or services from taxpayers after their registration as inactive in the Registry of Inactive/Reactivated Taxpayers forfeit their right to deduct expenses and value added tax for such purchases, except for acquisitions of goods performed as part of the foreclosure procedure.

Also according to the same order, it is noted that after the cancellation of the registration for VAT purposes, if it ceased the situation which led to the cancellation of registration, tax authorities will register the taxpayers for VAT purposes, ex officio, and the date of registration for VAT purposes is considered the date on which it ceased the situation which led to cancellation of registration, respectively the date of the communication of the decision to reactivate.

b) if entered into temporary inactivity, registered at Trade Register, according to law, from the date of registration of temporary inactivity in the trade register.

After cancellation of registration for VAT purposes, if it ceased the situation which led to cancellation of registration, tax authorities will register the taxable persons for VAT purposes, ex officio, and the date of registration for VAT purposes is the date on which it ceased the situation which led to cancellation of registration, respectively the date of registration in the trade register of the resumption of activity

c) if the shareholders / administrators of the taxpayer or the taxpayer himself have registered criminal offenses within the fiscal record provided by law (Art. 2 par. 2, letter a, of GO no. 75/2001 regarding the organization and functioning of the fiscal record), from the date of communication the decision of cancellation by the tax authorities.

After cancellation of registration for VAT purposes, if it ceased the situation which led to cancellation of registration, tax authorities will register the taxpayers for VAT purposes to the request of the taxpayer and the date of registration for VAT purposes is the date of communication the decision to register for VAT purposes.

Note: According to order 1436/28.09.2012 (published in the Official Gazette nr. 688/5.10.2012) taxable persons applying for registration for VAT purposes, according to art. 153 para. (91) letters b)-d), Fiscal Code, in which we previously have referred, submit to the competent tax authorities a new introduced document called “Application of registration for value added tax purposes (form 099).

d) if not submitted during a calendar quarter no tax return, but is not declared inactive or registered as temporarily inactive within the trade register, on the first day of the following second month of that calendar quarter. These provisions apply only to persons for which tax period is month or quarter.

After cancellation of registration for VAT purposes, if it ceased the situation which led to cancellation of registration, tax authorities will register taxpayers for VAT purposes to the request of the taxpayer, and the date of registration for VAT purposes is the date of communication the decision to register for VAT purposes.

For this purpose, the taxpayer must provide to the tax authorities certain information, respectively, documents: a) all VAT returns (form 300) not submitted on time, for a period of six months or two consecutive calendar quarters prior to cancellation of registration for VAT purposes; b) a reasoned request showing their commitment to work within the time prescribed by law the tax returns; c) the confirming certificate issued by the Trade Register showing particulars of the shareholders and administrators of the taxpayer on the date of submitting the application of registration for VAT purposes, for the companies registered within the trade register (see order 1436/28.09.2012).

e) if for the tax returns submitted for 6 consecutive months during a calendar quarter, for those persons that use calendar month as fiscal period, and for two consecutive tax periods during a calendar quarter, for taxable persons that use the calendar quarter as fiscal period, were not highlighted procurement of goods / services or delivery of goods / services made during this reporting period, from the first day of the following second month of that calendar quarter.

If it ceased the situation which led to cancellation of registration, the competent tax authorities will register the taxpayers for VAT purposes, to the request of the taxpayer and the date of registration for VAT purposes is the date of communication the decision to register for VAT purposes.

Registration for VAT purposes is based on an affidavit showing that economic activity will take place no later than the month following the month in which registration is sought for VAT purposes. If the taxable person does not file an application of registration for VAT purposes within 180 days from the cancellation date, the tax authorities will not approve any subsequent for VAT purposes reregistration applications.

f) the taxable person was not obliged nor entitled to apply for registration for VAT purposes, according to law.

Cancellation of registration for VAT purposes of taxable persons shall be carried out at the request of the taxpayer, or ex officio by the competent tax authorities, and the cancellation date of registration for VAT purposes is considered the date of communication of the cancellation decision by the tax authority.

g) where taxable persons requesting removal from the VAT registered persons record for applying the special exemption regime.

Note that the National Agency for Fiscal Administration organizes the Register of taxable persons registered for VAT purposes (according to art. 153) and the Register of taxable persons whose registration for VAT purposes was canceled.

Entries in the Register of taxable persons whose registration for VAT purpose has been canceled shall be made by the competent tax authority, after notification of the decision of the registration cancellation for VAT purposes within 3 days of notification.

Restrictions imposed by tax legislation:

Taxpayers, other than those declared inactive, whose registration for VAT purposes has been cancelled under the above situations (letters b - e) are not entitled to deduct the VAT for purchases made during that period, but are subject to the obligation to pay the collected VAT on taxable operations carried out during that period.

Beneficiaries who purchase goods and / or services from taxpayers whose registration for VAT purposes has been cancelled (as mentioned in point. B) - e) and were enrolled in the Register of taxable persons whose registration for VAT purposes has been canceled are not entitled to deduct the VAT for such purchases, except acquisitions of goods made as part of a foreclosure procedure.

6. THE OBLIGATION OF WRITTEN NOTIFICATION OF THE FISCAL BODY [LEGAL PROVISIONS - ART. 156^3 PARA. (4) AND (5) FISCAL CODE]

Given the importance of achieving certain data absolutely required for the calculation of VAT base for own community resources, was established (since 2011) the obligation to submit some written notification to the competent tax authorities:

- taxable persons, registered for normal VAT regime, with an annual turnover of less than the amount of 220,000 lei. Such notifications must be submitted no later than 25 February including of the following year and shall contain the following information:

a) the total amount of goods supply and provision of services to persons registered for VAT purposes and the related tax amount;

b) the total amount of goods supply and provision of services to persons who are not registered for VAT purposes and the tax amount involved.

Note the amendment: by that time, such notification were submitted only by persons registered for VAT purposes (cf. art. 153 of the Fiscal Code) which achieved a turnover of less than the amount of 10 000 euro, calculated at the exchange rate of last working day of the year.

- taxable persons not registered for VAT purposes, whose turnover (exclusively from the income obtained from selling tickets for road passenger international transport), obtained at the end of a calendar year, is less than the amount of 220,000 lei, must communicate by a written notification to the competent tax authorities until February 25 of the next year, the following information: a) the total amount of goods supply and provision of services to persons registered for VAT purposes, b) the total amount of goods supply and the provision of services to persons who are not registered for VAT purposes, c) the total amount and the tax on purchases involved from persons registered for VAT purposes d) the total amount of purchases from persons not registered for VAT purposes. Novelty from previous legislation of 2011 is explained by the fact that such notification submitted only taxable persons not registered for VAT purposes (according to art. 153) who achieved a turnover between 10,000 euro, calculated at the exchange rate on the last working day of the year, and 35,000 euros,

calculated at the exchange rate published by the National Bank of Romania upon accession.

7. NEWS REGARDING THE RECORD OUT OF PERSONS REGISTERED FOR VAT PURPOSES

Since July 1, 2012, the taxable person registered for VAT purposes, which in the preceding calendar year does not exceed the exemption threshold (65,000 euros respectively 220,000 lei, equivalent in lei at the rate of 3.3817 lei / euro) may apply for removal from the records of persons registered for VAT purposes, to apply for special exemption regime, provided that on the date of request did not exceed the exemption threshold for the current year.

Removing from the record is requested based on the form 096 "Statement of mentions regarding the cancellation of registration for VAT purposes for taxable persons registered for VAT purposes (according to art. 153), which during a calendar year shall not exceed the exemption threshold", which shall be submitted to the tax authorities between the 1st and 10th of each month following the tax period (month / quarter calendar) applied by the taxpayer.

As a result, the cancellation will be effective from the communication date of the decision on cancellation of registration for VAT purposes. Tax authorities are required to resolve requests for cancellation of the registration of persons registered for VAT purposes no later than the end of the month in which the request is made. By communicating the decision to cancel registration for VAT purposes, the taxable person has all the rights and obligations of persons registered for VAT purposes under the law. The taxpayer requesting removal of evidence must lodge the last tax return, regardless of the fiscal period applied, until the 25th of the month following that in which was communicated the cancellation decision of registration for VAT purposes. In the last filed tax return, taxpayers are required to highlight the value resulted from all tax adjustments.

If, subsequent to removal from evidence of persons registered for VAT purposes, the taxpayer obtains during a calendar year a turnover greater than or equal to the exemption threshold (220,000 lei) he must, as after registration for tax purposes to perform the tax adjustments in his favor. Adjustments will be reflected in the first tax return, filed after registration for VAT purposes, where appropriate, in a subsequent return.

Taxable person requesting removal from records of taxable persons registered for VAT purposes, if does not meet the legal ceiling, but is required to register for tax purposes, as he makes intra-community acquisitions which exceeded 10,000 euros or receiving / providing intra-community services must request, based on the form 091, special registration for VAT purposes, along with the request for cancellation of the registration of taxable persons registered for VAT purposes (according to art. 153).

Registering for VAT purposes for acquisitions and intra-community services (according to art. 153¹) shall be valid from the cancellation date of registration for VAT purposes according to art. 153. Such provisions shall also apply where the taxpayer elects to register for VAT purposes according to art. 153¹, along with the request for cancellation of the registration of taxable persons registered for VAT purposes according to art. 153.

8. IN CONCLUSION, THE CONSIDERATIONS JUSTIFYING FREQUENT LEGISLATIVE CHANGES IN OUR COUNTRY REGARDING VAT ARE:

1. Transposition of certain provisions of the European Directives;
2. Need to adopt certain technical measures;
3. Importance of achieving data absolutely necessary for calculation of VAT base, for own community resources;
4. Combating tax evasion.

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