

THE IMPLICATIONS OF ADOPTING THE OPTIONAL VAT AT COLLECTION

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Abstract: The value added tax (VAT) collection system, which is applied to any company with a turnover of up to 500,000 Euros, has become optional from 1 January 2014. Since January 1, 2014, taxpayers may choose the optional introduction of new system of VAT collection anytime during the year 2014 by filing a notice from the IRS, SELF removal from the register of taxable persons applying this system. By making changes and deregistration itself, taxpayers will continue to apply the system of VAT collection. For operations whose VAT chargeable event occurred until 31 December 2013 for the invoices issued before that date, in the event that the 90th calendar day from the date of invoice or the date set imitates the chargeability of tax occurs on full or partial consideration receipt of goods delivered or services rendered.

Changing the Tax Code is provided in GEO no. 111/2013, published in Official Gazette no. 809 of 19 December. New tax rules allow taxpayers to decide if they want apply VAT at collection system, this decision targeting about half a million taxpayers from Romania.

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1. Introduction

Thus, according to the article 2 of GEO no. 111/2013, beginning from January 1, taxpayers who currently apply VAT at collection system have two options:

1. To continue applying VAT at collection system if they meet the eligibility criteria

In this case they do not have to file any notice, the IRS considering that they opted to continue the application of this system.

2. To request not to apply VAT at collection system

Taxpayers may choose to not apply VAT at collection system at any time during the year 2014 by filing in a notice with the IRS to be struck from the Register of taxable persons applying VAT at collection system.

In this situation, the tax authorities will operate deletion of records starting with the date of 1st of the tax period following that in which the notice was filed.

Obviously, until the changes and deletion itself are made, taxpayers will continue to apply the VAT at collection system.

For both the taxpayers who will continue to apply VAT at collection system and those who will come out of this system, in the case of operations giving rise to the charge occurred until the 31st of December 2013 inclusively, as well as for invoices issued before that date, where the 90th calendar day from invoice date or deadline required by law to issue the invoice is after December 31, 2013, the chargeability of tax occurs on full or partial consideration receipt of goods delivered / services rendered.

2. Objectives

The new fiscal rules require that those who register as VAT payers during 2014 and opt to apply VAT at collection system are compelled to apply this system at least until the end of 2014.

The only exception is done only for taxpayers exceeding 500,000 Euros for this year, who are forced to pass to the normal regime of collection and deduction of value added tax even during the year.

This decision to introduce the possibility of option comes after the system of value added tax (VAT) collection system created distortions in the market and has disadvantaged small and medium enterprises (SMEs).

If VAT at collection system for companies with turnover up to 500,000 euro had not become optional starting on 1 January 2014, Romania risked triggering infringement procedure for non-respecting EU regulations, because it was violating European provisions.

Transformation of value added tax (VAT) system from mandatory to optional for companies with a turnover of up to 500,000 Euros, and elimination of the 90 days deadline were included in three draft laws in 2013, but they were not adopted in the fiscal year 2013.

From the 1st of January 2013, the VAT regime for about half a million taxpayers was amended mandatory, after the VAT at collection system was introduced which implies the chargeability of tax supposedly occurs when cashing the value of deliveries / supplies made or, in the case of unpaid bills, in the 90th calendar day from the date of invoice.

The system should be applied by all taxpayers who have a turnover ceiling lower than 2.250.000 lei (500.000 Euros).

VAT at collection system was introduced in the Tax Code by Ordinance no. 15/2012, published on the 29th of August, and its implementation was clarified by the Implementing Rules of the Tax Code, that were changed in the 8th of November through G.O. no. 1071/2012.

Subsequently, on the 26th of November 2012, Ministry of Public Finances has published an official guide for the application of the system, bringing together in a single document all legal provisions of the code necessary for the operations that fall under the VAT at collection system, while providing practical examples and explanations about the law.

Procedural rules regarding VAT collection has been updated and completed during 2013, by the Government Ordinance no. 8/2013, and the regulations were changed once more in April about cash payments.

When referring to what the state lost and gained from this system, the state has met difficulties when it came to applying the new VAT system.

Thus, in terms of tax administration, the authorities had to manage an additional statement (Notice 097) and operate registrations and deletions in the Register of taxable persons applying VAT at collection system.

In addition, fiscal control was hampered by the need of checking an additional volume of information.

From the perspective of tax control, tax inspectors had to familiarize themselves with new models of journals (increasingly different from one company to another), the new accounting records in account 4428 Non-exigible VAT and to additionally check out payment documents (extracts account, payment instruments, compensation orders, contracts of assignment).

In connection with the new VAT system, **the state had an undeniable benefit**. Tangible benefits for the state emerged from the controversial limit of 90 days.

The obligation to collect occurs not later than 90 days from the date of invoice or the obligation to issue an invoice, while the right of deduction has no exemption to 90 days.

Assuming that a company was required to apply VAT at collection system, and it received an invoice for supplying some goods in January 2013, all goods were sold in January 2013, but it paid the invoice received in December when it collected money from client. This has the obligation to collect the bill in April 2013, but can only deduce it in return in December 2013. For eight months, the amount of VAT is belonging to the state, as a **gift loan without interest** from the company.

For taxpayers, the implementation of VAT at collection system came up with many major inconveniences. Difficulties the companies encountered were, in the first phase, of administrative nature, forcing them to draw new VAT journals and manage a new format of the VAT statement and invoices.

In addition, implementation of the new VAT regime also meant increasing administrative costs because the right of deduction of VAT is granted only if, in addition to invoices accompanied by supporting documents to justify transactions, taxpayers also show documents on paying / cashing them.

And the bureaucracy has increased with the implementation of the new VAT system since, in the case of failing to indicated on invoices "VAT collection" formulation by suppliers / providers, beneficiaries are required in order to avoid problems with deductibility, to check the status of suppliers in the register of taxable persons applying VAT at collection system available on NAFA site, resulting in an additional administrative work.

3. Methodology

The new VAT regime had a negative impact on cash flow, cash flow impact being felt both by some small companies required to operate this system and large companies working with small companies applying VAT at collection system, in the sense that they will be able to deduct VAT on purchases from them only after the payment of the bill.

Also, although the VAT at collection system should be a measure able to release liquidity to the market and help companies during a period in which banks are still not open to financing; it was proved by its regulations that the system is not really a pay of VAT at the moment of collection, but rather a deferment of payment until the 90th day from the time of invoice, which does not bring significant benefits to taxpayers.

Moreover, the new VAT regime led, in some cases, even at the elimination of small firms in the market, as some large companies, which are not eligible to apply VAT at collection system, selected suppliers of goods and services depending on who applies or not the new VAT system. Suppliers who applied VAT to collection were excluded because big companies want to avoid administrative costs and to streamline cash flow.

Through the new legal provisions made by GEO no. 111/2013 regarding VAT collection, some changes and features applicable from the 1st of January 2014 may be noticed, namely:

- starting on January the 1st, 2014, implementation of the system is optional;
- application of the VAT collection can be made by taxable persons registered for VAT purposes who have established their business in Romania, if they achieved a turnover of less than 2.250.000 lei in the previous calendar year ;
- about chargeability (collection)of VAT, it comes in at the date of total or partial cashing of the goods delivered or services rendered, for the taxpayers who choose the application of the VAT at collection ;
- it has been repealed the obligation to collect VAT in 90 days for invoices of supplyingservices/delivering goods in the VAT at collection system, a situation that until now was considered by experts as violating the principle of neutrality of VAT.

4. Analyses

The fiscal implications of the Ordinance on VAT

- Re-invoicing of insurance made by leasing companies, respectively the amounts collected in a client's account, are exempted from VAT.
- VAT taxable base is reduced as a result of cancellation of the contract or in the case of total or partial denial of the quantity, quality or price of goods delivered / services.
- VAT taxable base is also reduced as a result of total or partial abolition of the contract, either by written agreement of the parties or by arbitration or following the court's decision.
- VAT is not adjusted for goods stolen, destroyed or lost that are properly justified. Documents for stolen goods may be issued by judicial bodies.

- the main change is that it is not necessary the court's decision to certify the theft.
- This justification for stolen goods issued by a judicial body applies for capital goods

The following taxable persons are not entitled to apply VAT at collection system :

- people who are part of a single tax group;
- taxable persons who are not residing in Romania;
- people who in the previous year exceeded the turnover of 2.250.000 lei;
- people who register for VAT purposes in the current year or are registered and have exceeded the ceiling of 2.250.000 lei during the financial year.

As a general rule, the person who opts for the application of the VAT at collection:

→ must submit a notification presenting the turnover of the previous year until January 25;

→ in case of newly created company wishing to register for VAT and wanting to apply the system of VAT at collection, notification is submitted upon registration for VAT purposes;

→ if opted for VAT at collection system, this system is compulsory in the current year, considering that it does not exceed the ceiling of 2.250.000 lei.

In case someone wishes to quit VAT at collection system must fulfill the following conditions:

→ the ceiling must not exceeded 2.250.000 lei;

→ since the first year of application is mandatory, the VAT at collection system can be given up starting with the next year.

The new rules are general and GEO no. 111/2013 has transitional provisions applicable to those who have already applied the system of VAT collection on the 31st of December 2013.

5. Conclusions

Effect of practice on small and medium enterprises hasn't been that of creating an advantage and it was not felt as a supportive fiscal measure to meet the needs of the company. On the contrary, application of the VAT collection led to meet the difficulties taxpayers required to apply this system due to many causes.

Large companies, those which were not obliged to applying the system of VAT cashing have started to select their suppliers depending on their obligation to apply VAT cashing or not. The reasoning behind this could be explained as following: large companies are not eligible to apply the system, have the right to deduct VAT on purchases from companies eligible to apply only at the time of bill payment system by such providers. On the other hand, these large companies are required to pay VAT on the state budget without any delay.

This created a downside from a cash flow perspective. In addition, reporting obligations invoices received from suppliers eligible for application of the more complex system, requiring attention and additional time spent (payment documents must be available and attached invoices, declaration of VAT not due in the month of

receipt of invoices and tracking carefully fee until settlement providers, darkening reporting system on VAT, etc.).

To avoid all these difficulties (from a cash flow perspective but also from an administrative perspective the reporting of transactions and preparation of VAT returns), large companies have started to select suppliers of those who are not required to apply VAT collection. Automatically, this reflected the business of these companies. Many of them came into difficulty because of this.

Measure which was desired favorable and advantageous proved to be the one who participates at the elimination of SMEs out of the market because the preparation of statements and documents VAT has become more difficult due to the introduction of this system.

Taxpayers had to follow carefully when the payments were made to suppliers (because only at that time were entitled to deduct VAT on invoices issued by concerned) had to keep a record of VAT registered due to 'postponement' payment / deduction of the respective amounts of VAT.

Under its administrative costs and time resources for strict observance of the law in terms of preparing accounting statements and record keeping of the tax increased for taxpayers eligible for the application system and beyond. In addition, depending on the application of the VAT system receivable (2,250,000 lei), taxpayers entered, and exited the "system". Obviously, the fiscal authorities should have been notified in this regard by filing additional statements.

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