

Tax & Legal Weekly Alert

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VAT split payment – Update of draft Ordinance. The main changes

On 18 August, the Ministry of Public Finances (“MFP”) updated the draft Ordinance on the VAT split payment.

We discussed the mechanism of the split payment and VAT account in our [tax alert](#) from August 8.

You may find below both the main proposals and our view on the updated draft.

Deloitte Events

Registration for webcast: [“VAT split payment – Update of draft Ordinance”](#) | Thursday, 24 August 2017 | 11.00 – 12.00 | Webcast held in Romanian Language



VAT split payment – Update of draft Ordinance. The main changes

What's new?

- Deferral of the optional application of the VAT split payment from 1 September to 1 October 2017.
- Deferral of the mandatory application of the VAT split payment from 1 October 2017 to 1 January 2018;
- The payment of the VAT from invoices should be made from the VAT account of the customer not only in the VAT account of the supplier;
- Various incentives for taxable persons that choose to join the system until 31 December 2017:
 - Cancellation of late payment penalties related to VAT liabilities, outstanding as of 30 September 2017, subject to certain conditions;
 - A 5% discount to the payment of corporate income tax/microenterprises tax;
- Extension from 3 to 7 working days of the deadline to wire in the VAT account the VAT related to transactions with cards, cards and cash substitutes;
- The VAT related to the invoices issued before 1 January 2018/date from which the mechanism is applied by option has to be wired in the VAT account in maximum 7 working days from receipt;
- Maximum 3 working days for ANAF to approve the transfer of the amounts from the VAT account in the current account of the holder;
- The sanctions remain heavy:
 - Introduction of a grace period of 7 working days in which errors can be corrected. If such errors are not corrected within this deadline, a penalty of 0.06% per day of delay will be applied considering the value of the VAT, but for no more than 30 days.
 - After the 30 days deadline, for:
 - Not wiring the VAT amount in the VAT account of the supplier or wrong debiting of the VAT account, a fine of 50% of the VAT amount will be applied, while for
 - Not wiring the VAT amount from the current account the VAT account or the payment of the VAT due *from* other account than the VAT account, a fine of 10% of the VAT amount will be applied.

Our view

The proposed changes are generally good news. We are referring in particular to those postponing the mandatory character of the system until 1 January 2018, the benefits granted as incentive to join the system, as well as establishing a deadline (3 working days) for ANAF to approve the transfer from the VAT account in the current account.

On the other hand, we do not see the purpose to impose the payment of the invoiced VAT from the VAT account of the client since that the paid amount would have anyhow ended up in the VAT account of the supplier. Practically, if the amounts in the VAT account are not sufficient, companies will need to make an additional bank transfer, i.e. transferring the VAT amount from the current account in the VAT account.

The tax benefits should have covered the period after joining the system as well, e.g. reduction of the VAT refund period (from 45 even 90 days currently) or decrease of late payment charges taking into account that the VAT will flow in a controlled environment. By comparison, Poland introduced a VAT refund period of 25 days for the refund of VAT and significant reductions of the VAT penalties.

Also, to ensure a balance, a special interest of 0.06% per day of delay going up to 50% of the VAT amount should have been introduced, in case of ANAF's

failure to observe the 3 working days deadline. Currently, taxpayers are entitled to interest of 0.02% per day for late refunds of VAT.

It is debatable if this system also applies to late approved transfers from the VAT account in the current bank account. Even if applicable, such interest is significantly lower compared to the penalty to which the state is entitled.

We have doubts that the 4 months deadline (September-December 2017) is sufficient for implementation. As such, we do not exclude new delays.

Furthermore, the draft Ordinance does not address many of the questions from the business community, for example offsets, the effective way of working for the settlements in cases of payments in the name and on account of a third party or via cheques/promissory notes. We expect that the implementing norms of the Ordinance to clarify these points.

Not the last, we hope that MFP will use the period until the end of the year to confirm with the European Commission its view expressed in the reasoning note that the split payment system does not breach the EU law, including as regards the level of penalties.

For further questions, please contact us.



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Deloitte events

On 24 August between 11:00 and 12:00 you will have the opportunity to ask questions regarding the VAT split payment during our webcast. We will present the last changes to the draft piece of legislation dated 18 August.

Speakers:

Adrian Teampau, Senior Manager
Ana Sabiescu, Manager

The registration for this webcast is open until **Wednesday, 18.00 o'clock** by accessing the following link: [Registration](#). The login user and password shall be sent on Thursday morning, 24 August.



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