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VAT split payment – Impact for business

The VAT split payment will apply in Romania from 1 October 2017, according to a draft Government Ordinance ("GO") published by the Ministry of Public Finances ("MFP") on 4 August 2017.

Taxable persons registered for VAT purposes will have to open a separate bank account ("the VAT account") to receive the VAT charged to customers and pay the VAT invoiced by suppliers.

Deloitte Events

Webcast "VAT split payment – Impact for business" | Friday, 11 August, 11.00 o'clock | Webcast held in Romanian language

Deloitte in mass-media

The impact of Plan BEPS seen by multinational groups all over the world, a survey commented by Dan Badin, Partner in Charge Tax & Legal, Deloitte Romania.

VAT split payment – Impact for business

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What does the split VAT payment mean?

- Opening of a bank account by taxable persons, including public institutions, registered for VAT purposes at the Treasury or at any bank. The IBAN will include the characters 'TVA'.
- Direct receipt in the VAT account of the VAT invoiced to clients for supplies of goods/services.
  - This does not apply to payments in cash, via cards or cash substitutes; however, the supplier has to the transfer the VAT amount in the VAT account in 3 working days.
- The amounts from the VAT account can be used to pay the VAT invoiced by suppliers and to pay the VAT due to the State Budget.
- The possibility of transferring amounts from VAT accounts to another (current) account by the holder only with the approval of ANAF. The draft GO does not provide for any deadline for such approval.
- Cash withdrawals from VAT account are prohibited.
- As of 1 January 2018, for debiting and crediting the VAT account, banks must also put in place an automatic / manual mechanism to verify that payments are made only between these accounts.

Drastic penalties

The draft mention fines for those who breach their VAT obligations through this system - up to 50% of the amount of VAT.

The reasoning of the split payment of VAT, according to the MFP

"This mechanism aims to increase the level of compliance of taxable persons by providing the financial resources for the payment of VAT due to the state budget, since the amounts collected from customers can no longer be used for other payments, but only for the VAT payable to suppliers or the state budget" the MFP asserts in the substantiation note of the GO.

Impact for business, our view

The separate payment of VAT is an idea that circulated in the VAT world since its inception. This was not possible due to e.g. huge impact in working capital and administrative burden.

Bulgaria had such system until 1 January 2007 but gave up due to these reasons and their impact mainly for small and medium enterprises.

Italy has put in place a VAT split system few years ago, but only on a limited basis (supplies to the state, state owned companies and listed companies. The Italian system is different compared to Romania, i.e. the customer is liable to pay the VAT in lieu of the supplier and the money are paid directly in the bank account of the state. Italy obtained derogation from the EU to apply this system, in line with the EU VAT Directive.

Poland is looking to implement a system similar to Romania as of 1 January 2018 and is preparing in this respect for more than 2 years.

While the VAT split payment may turn to be a good idea in fighting tax fraud, its short notice implementation can end up affecting good taxpayers, same as other initiatives of the last 10 years, e.g. the register of intra-EU operators, Form 088, the mandatory cash accounting system, taxing tips, and the finally aborted attempt to introduce VAT cash payments on intra-EU purchases of certain goods.

As it stands, the VAT split mechanism will have a significant negative impact given the increased administrative burden and cash flow impact. The mandatory character fuels the negative impact on Romanian taxpayers. This will affect honest taxpayers and tax evaders all together.

Payment terms will affect companies even more than they do now. Assuming that a transaction has a payment term of 60 days, the VAT would have still be paid by 25th of the following month from the supplier's own pockets. When the customer will pay the VAT, the money will go into the VAT account and the supplier will not be able to use the money unless approved by ANAF. Hence, there would be in effect a double hit as the draft does not provide for any term for ANAF's approval on transfer from the VAT account to the current account.

The measure could work if duly and timely prepared. To achieve full effects, it should be integrated in a wider e-tax compliance environment, e.g. SAF-T/e-audits, cash registers linked to the tax authority, e-invoicing, etc.

As Poland did, Romania should grant benefits to taxpayers for joining the system, e.g. quicker VAT refunds, nil or reduced late payment charges for VAT, etc.

Not the last, the substantiation note of the draft states that the VAT split payment does not breach EU law. However, the VAT split payment contemplated by Romania raises several questions in terms of compliance with EU VAT Directive and Romania's Constitution notably because the bank account is in substance not owned by the taxable person but by the state. Even if the taxable person is the legal owner of the money, the limitations in its use indicate that in fact the state is disposing of the money as owner.

Also, it is questionable if the 50% penalty observes the proportionality principle in cases where taxpayers pay the net VAT amount to the state in good time.

Main challenges for taxpayers include:

- Customers will not be able to make a single payment for goods or services acquired, doubling the payments: the net amount remitted to the contractor's regular bank account and the VAT amount remitted to the contractor's dedicated VAT account.
- Suppliers would need to find new sources to finance their VAT liability and will face cash flow difficulties. Small and medium enterprises would be most affected.
- Flexibility to use cash accumulated on the VAT account will be very limited (close to nil).
- Terms of payment, wording of agreements and business arrangements will require revision.
- Banks/Treasury will open dedicated VAT accounts automatically (with no need to execute any additional agreements). In 90 days, taxpayers will have to confirm the opening of these VAT accounts by the banks (at the Treasury, the accounts will remain open).
- The draft GO is silent about compensations/barters between taxpayers. As the system appears to be constructed, taxpayers may need to make cross-payments of VAT even if the base/net amount is compensated.

For further questions, please contact us.

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Deloitte events

You will have the opportunity to receive answers to your questions regarding the VAT split payment during our webcast, which will take place on **Friday, 11 August**, starting with **11.00 o'clock**.

For registration, please click here.

Deloitte in mass-media

The impact of Plan BEPS seen by multinational groups all over the world, a survey coomented by Dan Bădin, Partner in Charge Tax & Legal, Deloitte Romania. As well, Deloitte Romania launched a similar local survey:

https://www.profit.ro/taxe-si-consultanta/multinationalele-vad-o-abordare-mai-stricta-a-autoritatilor-fiscale-la-nivel-global-tendinta-globala-se-va-rasfrange-si-asupra-romaniei-studiu-deloitte-17123263

25 Years in Romania
Impact that matters