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The History Of The "Reverse Taxation" In Romania For The Operations Concerning The Value - Added - Tax (VAT)

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Abstract — In accordance with the stipulation of the VIth Title concerning the Value - Added - Tax (VAT) from the Fiscal Code, the suppliers and the beneficiaries of certain goods and/or services, registered with the purpose of obtaining the value-added-tax, are obliged to apply simplification rules called "reverse taxation". The supplier is obliged to write on the bills he emits the mention "reverse taxation" without writing the corresponding tax, and the beneficiary will calculate the tax, he will register it in the shopping day book and he will show it in the break up tax, as a collected tax, and also as a deducted tax, without paying the tax to the supplier.

Index Terms : Reverse Taxation, Value - Added - Tax (VAT), Fiscal Legislation

In the fiscal legislation the notion of "reverse taxation" was introduced through the Urgency Order number 83/19.08.2004 for the amendment and completion of the Fiscal code, which stipulated that the "reverse taxation" is applied for waste and pieces of ferrous and nonferrous metals (including the secondary materials resulted from their exploitation, fields and buildings or parts of buildings. Using the Law number 494/12.11.2004 for approving the Urgency Order number 83/2004, wood and live animals were also introduced.

The stipulations concerning "reverse taxation" have been applied starting with 01.01.2005.

Using the Law number 163/01.06.2005 for approving the Urgency Order of the Government number 138/2004 for the amendment and completion of the Fiscal Code, starting with 03.06.2005, the simplification measures concerning live animals have not been applied anymore.

Starting with 01.01.2007, as Law number 343/17.07.2006 stipulates for modifying the Fiscal Code simplifications measures for the works of buildings and assembling, goods and/or delivered services, or made by people that were declared in bankruptcy. These measures were applied until 31.12.2007.

Starting with 01.01.2008, using the amendments brought to the Fiscal Code by the Urgency Order of the Government number 106/04.10.2007, simplifications measures for the next goods and services have been applied:

- a) waste and secondary raw materials, resulted from their exploitation, as they are defined in the Urgency Order of the Government number 16/2001 republished and with further amendments, concerning the controlling of the recycled industrial waste.
- b) the goods and/or delivered services or executed by people for which the straitened financial situation has been declared, excepting the delivered goods in the detailed trade.
- c) wood

Starting with 01.01. 2010, using the amendments brought to the Fiscal Code by the Urgency Order of the Government number 109/07.10.2009, the operations for which the "reverse taxation" was applied were:

a) the delivery of waste and secondary raw materials resulted from their exploitation, as they are defined by the Urgency Order of the Government number 16/2001 republished and with further amendments, concerning the control of the recycled industrial waste.

b) the delivery of wood and wood materials, as they are defined by the Law number 46/2008 - Forest Code¹ with amendments and completions.

Wood represents the totality of all standing trees or cut down trees, entire trees or just parts of them, including those at different levels of transformation and movement in the process of forest exploitation.

Wood materials refer to round wood or cut wood, fire wood, timber, balk, square or rectangular timber, carved timber and all sorts of cut wood. This category also concerns shrubbery, Christmas trees, osier and baby trees.

Using the Urgency Order of the Government number 54/23.06.2010 the "reverse taxation" was extended also for the delivery of goods for the next categories: cereals, technical plants, vegetables, fruit, meat, sugar, flour, bread, and bread products. This measure was not applied because Romania has not received a derogation from the European Council. If the derogation is received, the measure can be applied until December 31st 2011.²

Starting with 31.05.2011, as the Urgency Order of the Government number 49/31.05.2011 stipulates, without solicitation of a derogation from the European Union Council, a reverse taxation was inserted for the delivery of the next cereals and technical plants:

- wheat;
- spelt (*Triticum spelta*) for seeding;
- spelt and wheat not for seeding;
- rye, barley;
- maize;
- soya;
- rape seeds or wild rape;
- sun-flower seeds;
- beetroot.

Starting with 05.09.2011, using the modifications brought to the Fiscal Code through the Urgency Order of the Government number 30/31.08.2011, for the operation concerning the delivery of waste and secondary raw materials resulted from their exploitation, there has been made a reference to the definition given to these by the Urgency Order of the Government number 16/2001, only being mentioned the category of waste for which there are applied simplification measures such as:

1. the delivery of ferrous and non-ferrous waste, recycled materials waste and used recycled materials such as paper, carton, textile material, rubber and plastic, glass and pieces of glass.

2. the delivery of the materials from point 1, after their manufacturing through operations of cleaning, buffing, selection, cutting, fragmentation, pressing or pouring in ingots.

Using the Urgency Order of the Government number 125/27.12.2011, available since 01.01.2012, there have been established much clearer the goods from the category of waste and recycled materials which the "reverse taxation" concerns, such as:

1. the delivery of ferrous and non-ferrous waste, rejects, including the delivery of semifinite products resulted from their manufacturing or melting.

2. the delivery of rejects and other recycled materials made from ferrous and non-ferrous metals, their alloys, slag, ash, and industrial rejects that contain metals or their alloys.

¹ Points 16 and 17 from Annex 1 from Law number 46/19.03.2008 - Forest Code.

² As the Article II alignment (1) from the Urgency Order of the Government number 54/23.06.2010 stipulates.

3. the delivery of recycled materials and used recycled materials, such as paper, carton, textile material, cables, rubber, plastic, glass and pieces of glass.

4. the delivery of the materials from points 1-3 after their manufacturing or transformation through operations of cleaning, buffing, selection, cutting, fragmentation, pressing or pouring in ingots, including the ingots of non-ferrous metals for whose obtaining other alloy elements were added.

Starting with 01.01.2011, using the Urgency Order of the Government number 117/23.12.2010, the "reverse taxation" was inserted for the transfer of certifications of gas emissions with a green house effect, as they are defined at article 3 from the Directive 2003/87/CE of the European Parliament and of the Council from October 13th 2003 of establishing a trade system of the degree of gas emissions with green house effect in the Community, and the modification of the Directive 96/61/CE of the Council, transferred using the article 12 from the Directive, such as the transfer of the units which can be used by operators using the same Directive.

Starting with 01.09.2013, using the Urgency Order of the Government number 16/30.07.2013, the application of the reverse taxation was extended for the delivery of electric energy too, and for the transfer of green certificates.

The reverse taxation for the electric energy is applied only if the delivery takes place for a taxed tradesman, established in Romania. The taxed tradesman represents the taxed person whose main activity, concerning the shopping of electric energy, represents the reselling of this energy, and whose own consumption of electric energy is ignorable. Through an ignorable consumption of electric energy we may understand a consumption of a maximum 1% of the energy bought in the period January - November of each year. The electric energy tradesman must have a license for his activity as an operator of the electric energy market, license delivered by the National Authority of Regulation in the Energy Field, for the transactions on the market for the next day and for the daily market. Also, the reselling buyer of electric energy must accomplish certain conditions:

1. to have a valuable license for the delivery of electric energy emitted by the National Authority of Regulation in the Energy Field.

2. his main activity is represented by the buying of electric energy for the reselling and his own consumption of electric energy is ignorable. For this purpose, they must announce the fiscal officer until the 10th of December of each year, with a declaration that is valuable for the acquisitions of electric energy for the next year. The National Agency of Fiscal Administration is obliged to present on its site, until 31st of December of each year, the list of the taxed people that have such declarations. For the electric energy acquisitions from an year, the buyer must transmit to the seller a declaration to show that his main activity is the reselling of the electric energy and his own estimated consumption is ignorable, declaration that is valid until 31st of December of that specific year.

The green certificate represents the title that stipulates the production from renewable resources of energy of a quantity of electric energy. The certificate can make a transaction, different from the quantity of electric energy that this represents, on an organized market, as the law stipulates.³

The simplification measures are applied only for the deliveries of goods and services from the interior of the country, for which the suppliers/manufacturers will not write the collected tax on their bills. The beneficiaries will calculate the corresponding tax, which will be shown in the value-added-tax calculation, as a collected tax, and also as a deducted tax. Through deliveries of goods in the interior of the country we may understand the operations made between people that are normally registered with a value-added-tax, which have the delivery place or manufacturing place

³ Article 2 letter h) from law number 220/2008 for establishing the promotion system for the production of energy for renewable sources of energy, republished and with further modifications and completions.

in Romania and these are taxable operations as the Fiscal Code stipulates. For the appliance of the simplification methods, the suppliers and also the beneficiaries are responsible.

The simplification methods for the delivery of cereals and technical plants, the delivery of electric energy and the transfer of green certificates are applicable until 31st of December 2018.

For the delivery of goods that are subjected to the simplification methods, including the collected payment in advance, the suppliers emit bills without taxation and write on these bills a mention referring to the fact that they have applied the reverse taxation. The tax is calculated by the beneficiary and it is written on the bills and on the shopping day book, as a collected tax and also as a deducted tax in the tax calculation. From an accountant point of view, the beneficiary will register during the fiscal period 4426=4427 with the corresponding tax.

The register of the tax by the buyer as a collected tax and also as a deducted tax in the tax register is called the autoremoval of the value-added tax, the collecting of the value-added-tax being at the level of the deducted tax, and this is inserted in the payment of the tax to the supplier/manufacturer.

The taxed people with a mixed regime that are the beneficiaries of some acquisitions subjected to the reverse taxation, will deduct the tax in the expense account, as the law stipulates concerning the right deduction.

The suppliers/manufacturers, that are taxed people with a mixed regime, will calculate the pro-rate, the value of the deliveries/manufacturing for which a reverse taxation was applied as taxed operations.

If the suppliers/manufacturers and the beneficiaries do not apply the simplification measures, they will be obliged by the fiscal officers to recalculate their operations and to apply the reverse taxation as the law stipulates. This way, the beneficiaries will cancel the deducted tax using the suppliers account, and they will execute the account book number 4426=4427, and they will register the breakup of the value-added-tax executed at the end of the fiscal period when the control is finalized, at the regularization stage.

If at the fiscal inspection for the beneficiaries of the operations, the tax officers establish that the beneficiary has not collected the value-added-tax at the specific moment of the operation, at the same time with the deduction right, obliging the beneficiary to pay this sum as the documents emitted by the fiscal authority stipulate, the suppliers/manufacturers can emit correction bills with the sign minus for a regularization of the tax and the reimbursement of this sum to the beneficiaries. The correction bills with the sign minus emitted by the supplier are not shown in the breakup of the beneficiary's tax.

Making an exception from the above stipulations, if at the date of acknowledgement of the non-appliance of the reverse taxation by the fiscal officers, the suppliers/manufacturers and /or beneficiaries are in a state of not being able to pay their taxes, insolvency stage, and also for the situations when the measures imposed by the fiscal officers cannot be applied at the same time to the supplier/manufacturer and to the beneficiary, because, at least one of them is in a state on inactivity, suspended from the Trade Register, deleted from the Trade Register, or there is a cancellation of the register code for the value-added-tax as the law stipulates; the normal regime of taxation is valuable if the next conditions are applied as it follows:

a) if the fiscal officers find out that there were not any negative fiscal consequences of the budget to the suppliers/manufactures and/or beneficiaries after the appliance of the normal regime of taxation;

b) the appliance of the reverse taxation to the suppliers/manufactures and/or the beneficiaries may generate negative fiscal consequences to the budget.

For the solving of the transitory situations that may appear as a consequence of the elimination of certain operations from this category, the current regime concerning the tax is applied at the respective date. For example, if a taxed person that is not able to pay his taxes emitted partial bills and/or in advance during the year 2011. The generation of the tax takes place after January 1st 2012. At the regularization of the partial bills and/or emitted in advance during the year

2011, the regime applied at the date of the appliance of the tax is applied, or reverse taxation, the supplier/manufacturer being obliged to pay the tax only for the difference between the value of the delivery and the sums from the bills from the year 2011.

In conclusion, the operations for which the reverse taxation is applied at the moment are:

a) the delivery of waste, rejects, rejects resulted from ferrous and non-ferrous metals, waste and recycled materials such as: paper, carton, textile material, cable, rubber, plastic, glass and pieces of glass, including the materials resulted after the manufacturing/transformation of these;

b) the delivery of wood and wood materials;

c) the delivery of cereals and technical plants;

d) the transfer of certificates of emissions with a greenhouse effect;

e) the delivery of electric energy;

f) the transfer of green certificates.

From all the things mentioned above, it is clear that the appliance of these measures does not imply any obligation of payment of the value-added-tax to the State Budget. From this point of view, the operations subjected to the reverse taxation have the same effect as the operations with a deducted right.

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4) The Urgency Order number 138/2004 for the modification and completion of the Law number 571/2003 concerning the Fiscal Code, approved using the Law number 163/01.06.2005;

5) Law number 343/2003 concerning the Fiscal Code, approved using the Law number 163/01.06.2005;

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8) The Urgency Order number 54/23.06.2010 concerning some measures for the control of fiscal evasion;

9) The Urgency Order number 117/23.12.2010 for the modification and completion of the Law number 571/2003 concerning the Fiscal Code and the regulation of some financial-fiscal measures;

10) The Urgency Order number 49/31.05.2011 for the modification and completion of the Law number 571/2003 concerning the Fiscal Code and some other financial-fiscal stipulations;

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