

EU – THE REGULATING LEGISLATIVE ENGINE OF ROMANIA IN TERMS OF VAT AFTER THE ACCESSION TO EU

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The accession of Romania to EU involves the obligation to enforce the same rules as the other member states, VAT being a tax which must exist and which must not allow competition disturbance among the economic operators within different member states, as well as non-taxation or double taxation of the same operation in two different member states. The harmonization of VAT within EU has been done gradually. The value added tax (VAT) was established in the Economic European Community in 1970 by means of two “VAT Directives”. Representing the indirect tax with the highest weight in the GDP (Gross Domestic Product), the European Union has established an obligation according to which the member states contribute with a share of the cashed VAT to the EU budget.

Key-words: EU, VAT, accession

A. EU regulations regarding VAT

The actions of EU regarding the indirect tax field have as legal grounds articles 90 and 93 of the Treaty for the establishment of EU. The rule governing this treaty is the unanimity one, being grounded, at the same time, on the principle of indirect taxes harmonization, and not their standardization.

The VAT harmonization in EU has been performed in several stages:

1. VAT implementation in all member states (until 1970)
 2. standardization of the taxation basis for VAT and VAT shares (1977-1993)
 3. passing to a transitory system for VAT, once the unique market is formed and suppression of the border customs (January, 1, 1993)
 4. simplification of the VAT system and cooperation of all member states for decreasing the fiscal fraud
1. The value added tax (VAT) has been implemented in the Economic European Community since 1970 by means of two “VAT Directives”, having as purpose the replacement of different taxes on manufacture and consumption enforced by the member states, which represented obstacles for the free circulation of goods, taking into account two main reasons: advantages of VAT related to other indirect taxes and, especially, related to the tax on cascade circuit; transparency of the operations regarding the taxation of imports and taxation exemption of exports performed between member states.
 2. As it represents the most significant indirect tax in GDP, the European Union has established an obligation for the member states compelling them to contribute with a VAT share to the EU budget. Thus, the following stage has been implemented, respectively the harmonization of the taxation basis for VAT, which means it would be enforced for the same economic transactions in all member states (Directive 77/388/CEE). Such directive has established a harmonization system for VAT and has allowed, at the same time, the settlement of a *Working program intended to fulfill the goal of removing the fiscal borders*, by attempting to harmonize the VAT levels. However, the harmonization has not meant the levels' standardization, but their approach enough to not disturb competition.
 3. In order to adjust VAT to the requirements of a Sole Market with no borders (01.01.1993), the 6th VAT Directive has been amended. Thus, Directive 91/111/CEE, passed in 1991 and 1992 stipulated:
 - a transitory regime, which would be completed by unifying the levels;

- a *definite taxation system* for exchanges between member states, which would replace the transitory regime and would be grounded on the taxation in the member state of origin of the goods delivered and services rendered;

The *transitory VAT system*, in force since January, 1, 1993, has removed fiscal checks on the borders within the Community both for end-consumers and economic agents. By means of the transitory system, the notion of import has been replaced with the notion of inter-community purchase, and the notion of export with the notion of inter-community delivery. This system is characterized by:

- *preservation of the principle of destination* (the passing to the principle of origin is not abandoned and it remains a long term objective of the fiscal harmonization);
- *renouncement to the border fiscal control between member states*;
- *continuation of the efforts to harmonize the VAT levels*;

To such end, the European Community has made repeated proposals to use only two classes of levels, a standard one, ranging between 15% and 25% and a reduced one. The Council of ministers, finances and economy has agreed to keep the minimal standard VAT level to 15% and the member states to take all steps not to exceed such minimum more than 10 percent points when they establish their own standard VAT levels. If in terms of taxation basis, some uniformity has been reached, in terms of VAT levels, there are noticeable differences; thus, the lowest VAT level (15%) is registered in Luxembourg and Cyprus and the highest (25%) in Denmark and Sweden.

Despite the efforts sustained to harmonize VAT, its regime remains terribly complex for economic agents and it maintains a certain “stiffness” of the domestic market. Keeping different taxation rules, non-uniform enforcement of the community legislation and the insufficient convergence of the VAT levels, has led to a certain malfunction of the system. In this respect, in July 1996, the Commission presented a *Working program to speed the passing from the VAT transitory regime to a common definite system*. The Program intended, in an ambitious way, to approach general principles regarding VAT (taxation level, the notion of excisable person, exemptions, place for VAT levying – the principle of levying at the source).

4. Although the passing to a definite VAT system was planned for the end of 1996, the European Union still operates as a transitory VAT system, the “levying at the source” system not being completely accomplished. The European Union has made progress for VAT’s harmonization, but its management, however, remains complicated, requiring plenty of procedures which need time and money to be completed while fiscal frauds are increasing.

The renouncement to the fiscal control at the member states’ borders, given the principle of VAT payment at the source, does not lead to the removal of the notion of “fiscal borders” in terms of goods and services’ circulation among member states. The goods and services which are transported from a member state to another member state must be “marked” somehow, bearing a different VAT system than the one related to national goods and services. This means significant costs for the enforcement of the fiscal procedures.

B. VAT characteristics in the European Union

The main characteristics of the value added tax in the European Union are as follows²⁹⁷:

- The European system regarding the value added tax has been established and is amended based on the EU directives;
- It had been planned that until 1970 all the states - members at that date to implement the value added tax in their national fiscal systems;
- It has been acted to the standardization of the taxation basis and levels since 1977;
- Some member states have negotiated to obtain VAT exemptions or differential taxation levels for certain regions or territories. Thus, areas such as the Canary Islands, Ceuta and Melilla of Spain, Gibraltar of Great Britain and the Aland Islands of Finland are not under the jurisdiction of the VAT European system and, also, adjustable levying levels have been accepted in Madeira of Portugal;

²⁹⁷ “EUROCONSULTANȚĂ – ghidul firmei” Magazine , no. 3/ March 2007

- The standard taxation level is established to a minimum level of 15%, the member states having the possibility to increase such level, but not more than 10 percent points.
- Reduced taxation levels, over-reduced levels (below 5%) and zero level are admitted for certain classes of goods and services. The case of the zero level is a characteristic of the 6th Directive, its goal being to establish a minimal taxation level, namely 5%. However, in some member states and, especially in the Great Britain, there has been accepted the preservation of the zero level by means of waiver, without the possibility to widen the action range of such level to other goods and services.
- The use of different VAT levels in the member states has started from the idea that goods and services could be classified in several classes, taking into account the need for them. Accordingly, the luxury class endorses higher taxation levels and the class of essential goods – lower levels. Although states such as France and Great Britain have supported such theory, practice has proved that it does not have the same validity any longer (for instance, in Great Britain, children apparel falls into the zero level while adults' apparel falls into the 17.5% level).
- The rules regarding the implementation of the value added tax on prices, addresses in EU the sale accomplishment. Thus, if the highest part of the sales addresses the end-consumer, prices must include VAT and if deliveries endorse another company, prices must not include VAT.
- The value added tax is due as percent and, thus, it is visible in every stage where commercial transaction occurs, becoming a neutral tax related to the number of commercial transactions;
- All the EU member states enforce the principle of destination in terms of VAT, namely the deliveries of goods and services from a member state to another member state are VAT free in their origin country and subject to VAT payment in the destination country;
- According to the perusals regarding the effects of the value added tax, the following conclusions have been drawn: this tax is advantageous for legal entities because they deduct the VAT afferent to purchases, unlike end-consumers who bear the tax by means of the price paid for the purchased good or service; the rich pay less compared with the poor, the tax acting as a regressive tax; the perusal of how supply and demand act must be performed by taking into account both the tax existence and inexistence, to become, on one hand a fiscal duty for the tax-payer and, on the other hand, a firm source for obtaining public financial results.

C. Considerations regarding the VAT levels enforced by the EU member states

The European fiscal policy may not endorse and must not enforce standardization upon the levels of the member states' fiscal systems. The action of the European fiscal policy occurs in the attunement of the national fiscal systems for the member states and those which candidate to accession, based on the common goals established under the concluded treaties.

Taxes on expenses and consumption represent the class of indirect taxes, a significant resource of income for the central administration budget. Passed initially in France in 1954, upon the initiative of M. Lauré, the value added tax, due to its characteristics, has allowed the action of the European fiscal policy, meaning the harmonization of the taxation basis and of the taxation levels.

The significant moments regarding the harmonization of the value added tax (the implementation of this tax in the fiscal systems of all the member states, the harmonization of the taxation basis and of the taxation levels, the VAT transitory system, and the simplification of the VAT system) are grounded on the provisions of the EEC Directives, respectively: Directive 7, 77/388/EEC (Art. 2, 4, 5, 6, 7 regarding the application range and levied persons; Art. 11, taxation basis; Art. 12, VAT levels; Art. 13, 14, 15, VAT-free operations; Art. 17-20, discounts; Art. 24, 25, 26, special regimes, exceptions); Directive 86/560/EEC regarding VAT reimbursement; Commission Resolution no. 98/527/EEC regarding the prevention of the VAT frauds.

The VAT standard levels, reduced levels and over-reduced levels enforced by the EU member states in 2005 were those listed in the table below:

EU member states	Standard levels	Reduced levels	Over-reduced levels
Austria	20	10	-
Belgium	21	6	-
Denmark	25	-	-
Finland	22	8/17	-
France	19,6	5,5	2,1
Germany	16	7	-
Greece	19	9	4,5
Ireland	21	13,5	4,4
Italy	20	10	4
Luxembourg	15	6	3
Great Britain	17,5	5	-
Holland	19	6	-
Portugal	21	5/12	-
Sweden	25	6/12	-
Spain	16	7	4
UE 15	19,81	8,53	3,67
Czech Republic	19	5	-
Cyprus	15	5	-
Estonia	18	5	-
Latvia	18	5	-
Lithuania	18	5/9	-
Malta	18	5	-
Poland	22	7	3
Slovakia	19	-	-
Slovenia	20	8,5	-
Hungary	25	5/15	-
UE 10	19,2	6,77	3
UE 25	19,51	7,65	3,34

The perusal of the data presented above points out the compliance with the requirements stipulated by EU regarding the minimal and maximum limits as regards the standard level.

It is obvious that only Cyprus and Luxembourg enforce the standard VAT level according to the minimal value stipulated by EU (15%), the explanation for such practice being related to the classification of these states as being part of the area of fiscal paradises with low taxation.

In Germany, Great Britain, Spain, Czech Republic, Estonia, Greece, Lithuania, Latvia, Malta, Holland and Slovakia, the standard VAT level is below the average registered upon EU level while in Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Portugal, Sweden, Poland, Slovenia and Hungary, the standard VAT level exceeds the average registered upon EU level.

Although the fiscal harmonization in terms of VAT has been accomplished regarding the taxation basis and the standard taxation level, it can be noticed that only two states – Denmark and Slovakia – do not use reduced VAT levels while states such as France, Greece, Ireland, Italy, Luxembourg, Spain, and Poland enforce both the reduced level and the over-reduced level.

The enforcement of the reduced VAT levels, both in older and new member states endorses the following products and services: essential food, water supply, medicines, medical equipment for disabled persons, person transportation, books, newspapers, magazines, services of composers and writers, social housing, agricultural products, hotel services, sports events, use of sports facilities, social services, services rendered by crematories, medical and dentistry services, waste collection, street cleaning.

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