

National and International Fiscal Regulations on Value Added Tax - Part I -

George-Adrian STANCIU, ec.

Vrancea, Romania

Abstract

This paper aims to analyze national and international tax regulation on VAT. The reason why we chose this topic is the fact that in recent years the legislative changes on VAT have seen numerous updates on the Romanian economic market, which leads us to think that there are fluctuations in the activity of a company, both from an economic and an operational perspective.

Taking into account the economic potential of our country, which is not very well exploited, we believe that this paper can bring into discussion a challenging topic. The main purpose is to analyze and reflect the impact of the change in VAT legislation on the business environment, as well as on the final consumer.

Key terms: value added tax, VAT code, VAT rates, taxpayers, Fiscal Code, taxable transactions, simplification measures, VAT cash accounting system, e-invoicing, blockchain, cryptocurrency

JEL Classification: K34, H87

To cite this article: George-Adrian Stanciu, *National and International Fiscal Regulations on Value Added Tax (I)*, *CECCAR Business Review*, N° 10/2020, pp. 61-72, DOI: <http://dx.doi.org/10.37945/cbr.2020.10.08>

➔ Introduction

This paper covers theoretical aspects such as the history and evolution of value added tax at national and international level. The importance of this article lies in the knowledge and course of changes over time. In this way, comparisons between different time periods can be much better analyzed and understood. We also presented the scope of value added tax, its evolution and some main features that are specific to it.

➔ Evolution and specific rules of VAT at national and international level

1. Literature review

The value added tax was first experimented and adopted in France, in 1954, at the initiative of Maurice Laure. The application of value added tax became widespread in 1968 in France. On 1 January 1970, this value added tax was implemented by most Common Market countries. Thus, the tax that applied to the movement of goods and which had the effect of waterfall taxation was replaced.

The definition of value added tax can be presented from several perspectives, according to the table below, each of them having the same common denominator: an indirect tax.

Table 1. Literature review

Value added tax	
Literature review	Definition
Law No. 227/2015 on the Fiscal Code, as subsequently amended and supplemented	The value added tax refers to an indirect tax due to the state budget that is collected in accordance with legal provisions.
Tufan & Tempea, 1999	Value added tax is defined as a modern and efficient tool, which can encourage exports and discourage imports, can accelerate the economic and financial development of enterprises, the development of investments and the marketing of goods demanded on the market.
Romanian Explanatory Dictionary (https://dexonline.ro/)	The tax refers to a sum of money, collected in the form of a tax, applicable to each stage of a production circuit related to the final product. Also, the amount of money is a payment that is made in the budget, only if the economic agent benefits from various goods or services.
Narayan, 2003	The general consumption tax levied on goods and services is the value added tax. The commercial activities in which the production and distribution of products are involved, implicitly the provision of services fall within the scope of application of value added tax. The consumption tax is established following the application of a percentage on the price, a tax that is borne by the final consumer.

Source: Author's contribution.

The fact that the establishment of indirect taxes is made according to the sale and placement of goods and the provision of services affects all individuals and legal entities. Therefore, indirect taxes are not analyzed in detail, compared to direct taxes determined according to the category in which the taxpayer falls, and, as a result, final consumers do not consider the tax paid to be highly important. (Tufan & Tempea, 1999)

As value added tax is an important source of revenue for the state budget, it also contributes to increasing stability and growth. Representing a consumer tax and the existence of a strong and very well-organized system, the value added tax can contribute to economic development and to its renewal.

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud, as amended by Council Directive 2013/43/EU of 22 July 2013, describes how tax is levied at the European Union level. The application of a standard rate is determined by each member country and it is the same for supplies of goods and services. Over time, this tax has undergone many changes in each member country.

2. History of VAT at the European Union level

The introduction of value added tax in the European Economic Community in 1970 led to the replacement of various taxes on production and consumption which hindered trade between states. Until this moment,

value added tax has undergone continuous changes in order to reach a common denominator or to harmonize its conditions and application in the Member States.

The harmonization of value added tax took shape in 1977, with the introduction of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, which sets out how to substantiate value added tax at the Community level. This Directive was subsequently amended in order to eliminate tax frontiers and to establish a transitional system of value added tax. This decision to eliminate the tax frontiers required a change in the percentage rates of value added tax.

By applying Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates), Member States could apply the following types of value added tax rates: the standard rate and one or two reduced rates. The standard rate could not be less than 15%, and the reduced rates should be no less than 5%.

With the aim was to improve the functioning of the value added tax system in the Community, in 2000 it was decided to develop a long-term strategy aimed at simplifying, modernizing and applying the existing rules more consistently, as well as supporting a good administrative cooperation. Few years latter, in 2003, taking into account the program proposed in 2000, a review was carried out, citing the following achievements:

- submission of value added tax returns in electronic form by all taxpayers: residents and non-residents;
- establishment of the legal framework for the electronic storage of invoices, as well as for electronic invoicing;
- standardization of the reduced rate of value added tax and its sphere of action etc.

The value added tax was applied in Romania by Government Ordinance No. 3/1992 on value added tax, approved by Law No. 130/1992. After the introduction of the value added tax, there was a rapid price increase in Romania, but the impact was minor compared to the other determinant factors of inflation in 1993.

Six years after the introduction of this tax in Romania, in 1999, this indirect tax accounted for over 32% of the total budget revenues compared to the value of taxes on salaries, which only accounted for 22.5% of the total budget revenues.

Replacing the tax on the circulation of goods with the value added tax, as of 1 July 1993, represented an important step in the adoption of the more practical fiscal legislation of the community space in Romania.

3. Some fact about the evolution of the VAT rates in Romania

As mentioned before, the introduction of value added tax in Romania took place on 1 July 1993 by Government Ordinance No. 3/1992, and constituted an evolution, in the sense that Romania adopted a fiscal legislation similar to that of the European Union member countries. The standard VAT rate was 18%, and a 0% VAT rate applied for operations regarding the export of goods and services. A reduced VAT rate of 9% was introduced on 1 January 1995, which was applicable only to certain food and pharmaceutical products of strict necessity. (Vâscu, 1995)

The first increase in the standard rate took place after three years, on 1 February 1998, with an increase of 4 percentage points – 22%, and the reduced rate increased to 11%. Shortly after this change, the standard VAT rate reached a new level of 19% in 2000, and the reduced rate was eliminated. The changes in 2000 had an impact on the incomes of people with lower living standards, as consumer goods were a first necessity, which had a high share.

The entry into force of Law No. 345/2002 on value added tax, on 1 June 2002, had as a main objective the definition of the notion of *taxable person*, in order to clearly delimit and establish the meaning of taxpayers.

On 1 January 2004, the VAT exemption without the right to deduct was abolished and the reduced rate of 9% was reintroduced.

In 2007, with Romania’s accession to the European Union, the conditions regarding the national legislation were regulated. They were only applicable in contact with the countries that were part of the European Union. (Vilaia, 2005) In 2008, there was a standard quota of 19% and a reduced quota of 9% which applied to access to castles, museums, memorial houses, monuments, exhibitions, textbook deliveries, books, newspapers, magazines, the delivery of prostheses and related accessories, of orthopedic products, medicine and to accommodation in the hotel sector.

These quotas were maintained in 2009, but a reduced quota of 5% was also used for the delivery of residence buildings for old people’s homes and orphanages, rehabilitation centers for children with disabilities or no place to live, but also for the delivery of dwellings for unmarried persons or families with certain conditions related to area and value. Also, in 2009, new provisions were introduced regarding the limits of the right to deduct. Thus, for vehicles with a maximum weight of 3,500 kg and with a maximum of 9 seats, limited deductibility in certain conditions was introduced for the value added tax at their purchase, as well as for the purchase of fuel necessary for these vehicles. There are also some exceptions such as vehicles used for commercial purposes, interventions, repairs, security and protection, courier, transport of personnel, paid transportation of persons and vehicles for the provision of paid services.

In 2010, the standard VAT rate was, again, increased by 5 percentage points, reaching 24%.

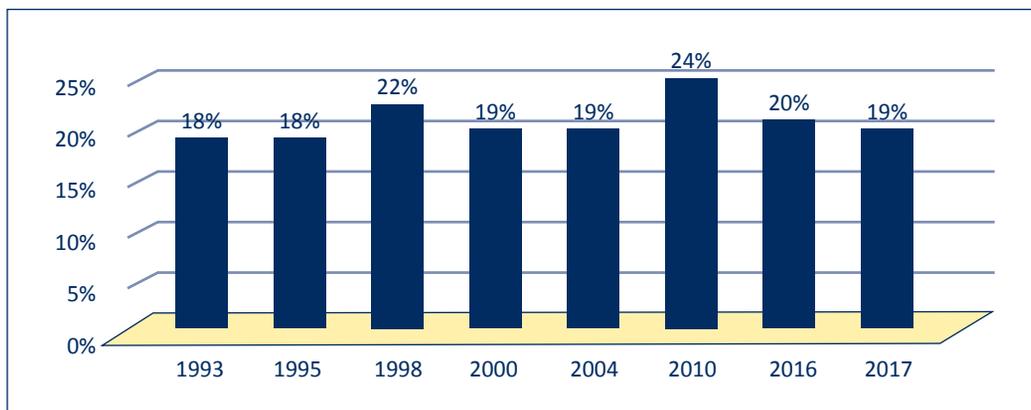


Figure 1. The evolution of standard VAT rates in Romania

Source: INSSE, <https://insse.ro/cms/>.

Further, the VAT standard rate was reduced at 20% in 2016, followed by another decrease a year latter at 19%. Meanwhile the reduced rates experienced a lot of changes in terms of types of transactions to which they apply.

4. Specific national and international VAT rules

■ Subject matter and scope

As mentioned before, the value added tax is in fact an indirect tax that applies to consumption. In Romanian, the specific legislation is completely harmonized with the European Union legislation since 2017, when the Council Directive 2006/112/EC of 28 November 2006 which sets out rules on the common system of value

added tax was implemented in the Fiscal Code. In the following table, some of the main characteristics of this tax are disclosed:

Table 2. VAT characteristics

Characteristics	Description
Universal nature	A tax applicable to all goods and services in the economy, resulting from activities of exploitation, but also from the development of available capital.
Single neutral tax, with fractionated payment	Discrimination is eliminated, the tax rates being applied to all activities in an economy; Fractionated payment – the computation is performed on each transaction involved in the production and capitalization of a product.
Ensuring transparency	Each taxable person has the chance to exactly and concretely identify the value of the tax and the obligation to be paid.
Ensuring effectiveness	Given the fact that it is a cumulative tax, it is collected for each transaction with products and services.
Ensuring neutrality	Given the fact that it is a single tax, its size remains independent of the number of transactions.

Source: Hoanță, 2000.

The operations that have cumulatively fulfilled the following conditions, fall within the scope of application of value added tax according to Fiscal Code:

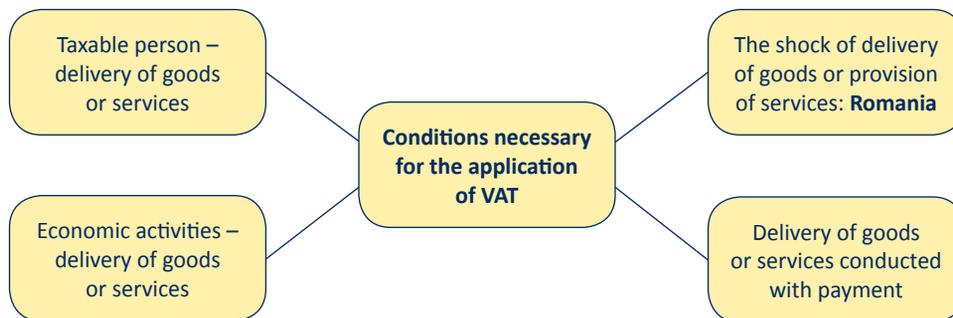


Figure 2. Conditions necessary for the application of VAT

The Fiscal Code states in Article 268 that taxable transactions are considered to be the following:

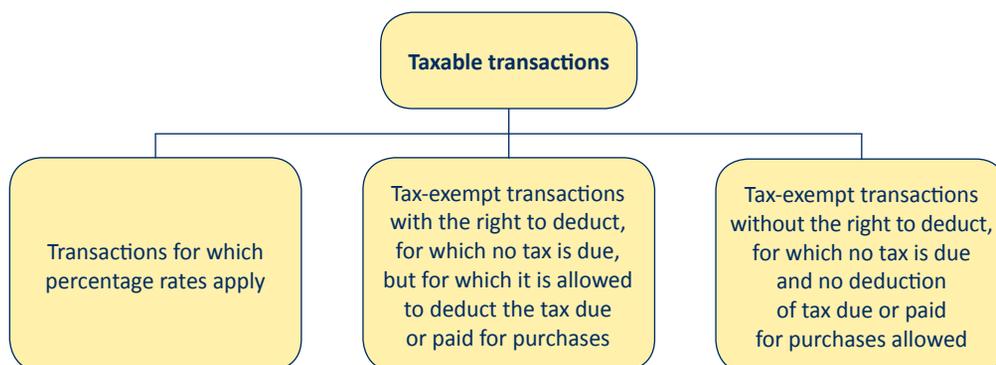


Figure 3. Taxable transactions

Taxable person refers to any person, regardless of the legal status, who independently performs economic activities in order to obtain income continuous in nature.

According to Case C-60/90 – Polysar Investments Netherlands v Inspecteur der Invoerrechten en Accijnzen, from the point of view of VAT, the parent company is not considered to be a taxable person whose sole object of activity is the acquisition of shares of other companies, without being directly or indirectly involved in their management. According to Case C-268/83 – Rompelman v Minister van Financiën, the taxable person is considered to be the person who expresses his intention to pursue economic activities, supporting that with sufficient objective evidence.

The Order of the President of the National Institute of Statistics No. 337/2007 regarding the update of the Classification of activities in the national economy – CAEN, applicable as of 1 January 2008, classifies the purpose of an economic activity: commercial or non-commercial. The goods that fall within the scope of application of value added tax are movable and immovable tangible assets, movable assets that cannot be detached but also electricity and everything related to this field.

■ Place of taxable transactions

Payable transactions as well as those assimilated to them, which are carried out independently, are taxable transactions.

According to Article 270 of the Fiscal Code, the transfer of ownership, directly or indirectly, through the persons acting on the property owned by the owner represents the delivery of goods. Also, according to the regulations provided in the Customs Regulation, the goods that are introduced into the country through authorized persons or even directly fall within the scope of application of value added tax.

Romania represents the place of delivery of goods in situations where they are located on its territory, such as:

- the location of the goods at the time of delivery, or when the shipment or transport takes place;
- regarding the goods that require installation or assembly, their locations is considered to be where the process takes place, without taking into account whether the commissioning is performed by a third party or by the supplier;
- in the case of imports of goods, the place of the taxable operation is also considered to be Romania.

Furthermore, we will present some categories of transactions, for which specific rules apply in order to determine the place of the taxable transaction. For transactions that do not take place in Romania, but that fall within the scope of VAT, the company **does not have to pay the tax in Romania**. In the case of deliveries of goods which have transport included, the place of the taxable transaction shall be deemed to be the place where the goods are located at the time their transport has begun.

In addition to the situations presented above, there are several special cases in which the place of the taxable transaction is determined according to its nature. For example, for deliveries on board aircrafts, ships and trains, as well as during the carriage of passengers within the Community, the place of the taxable transaction is considered to be **the place of departure**. For natural gas supplies based on a natural gas system located in the territory of the European Union or connected to such a system, the place of taxation is considered to be the place where it is located.

■ Taxable amount and rates

The tax base is determined by the value of the goods or services paid, from which the value added tax is excluded.

In order to determine the taxable amount, it is necessary to determine the value added tax, taking the following factors into consideration:

- negotiated prices between partners (sellers-buyers);
- tariffs that are negotiated for the provision of services;
- commission related to interim operations;
- market prices or if it is not the case – the cost of goods;
- customs value plus customs duty, other duties and excise duties due on imported goods and services.

The value added tax base can consist of the following elements:

- the value related to the supplies of goods and services;
- purchase prices which can be determined at the time of delivery. If the goods are fixed assets, the purchase price to be adjusted is taken into account;
- the expenses necessary for the provision of services incurred by the taxable person.

The tax base does not include the following elements:

- all categories of discounts that can be granted directly to customers on the date on which the tax becomes chargeable;
- the values representing damages, interests and contractual penalties;
- interests, calculated after the delivery or provision of the service, related to late payments;
- the equivalent value of the packaging that has as circuit the exchange between the suppliers of goods and customers, without invoicing;
- payments made on behalf of other beneficiaries, which are subsequently settled.

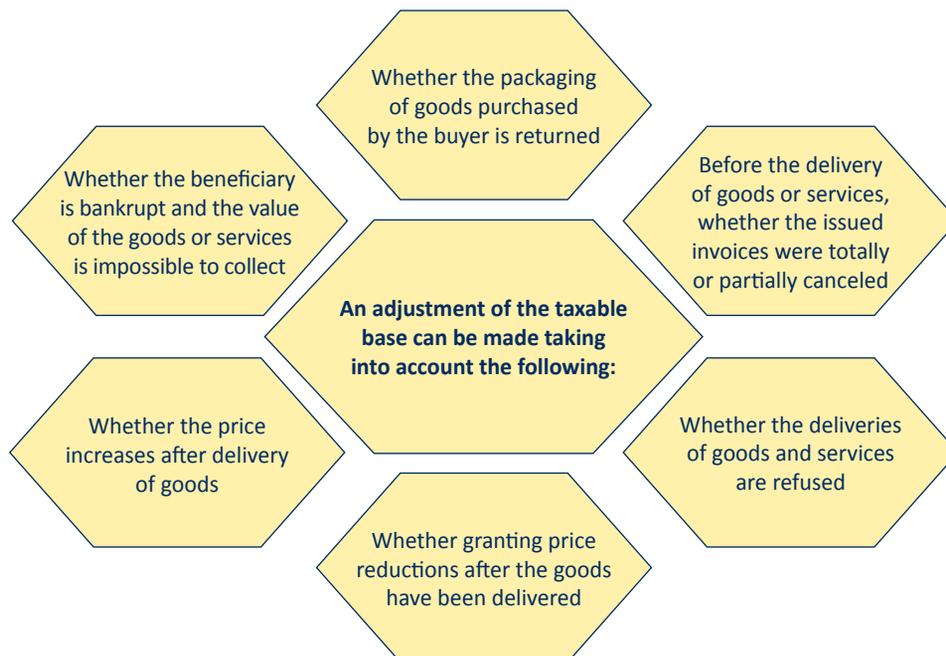


Figure 4. Situations that determine the adjustment of the tax base

Source: Author's contribution.

The applicable value added tax rate is that which is in force on the date on which the value added tax generative event arises. The VAT rates currently applicable in Romania can be identified in the following table.

Table 3. VAT rates currently applicable in Romania

19% VAT rate	VAT rate as of 1 January 2017
9% VAT rate	<ul style="list-style-type: none"> Prostheses and accessories as described in current legislation. There are also dentures that do not support value added tax. 9% VAT is applied including for the delivery of prostheses; Delivery of medicine (for human and veterinary use); Merchandising of food and drink for animal and human consumption, including ingredients used in food preparation; Catering and restaurant services, less alcoholic beverages; Distribution of drinking water and irrigation water; Sale of pesticides and fertilizers, as determined by the Ministry of Agriculture and Rural Development.
5% VAT rate	<ul style="list-style-type: none"> Textbooks, magazines and publications in general, except advertising; Hotel services and accommodation in specific units, including land used for camping accommodation; Entrance fees to museums, memorial houses, archaeological or cultural sites, sporting events and other such services; Houses built for social purposes, including the land on which they are built; Houses with areas smaller than 120 square feet and which value less than 450,000 lei (including the land); Construction of buildings for town halls that will be used for social purposes; Eco, traditional and mountain products.

Source: Author's contribution.

■ Chargeable event and chargeability of VAT

Chargeable event and chargeability of VAT are two notions that can be associated in cases in which they occur at the same time as the delivery of goods or the provision of services.

According to Council Directive 2006/112/EC, *chargeable event* means the occurrence by virtue of which the legal requirements necessary for VAT to become chargeable are fulfilled, and the *chargeability of VAT* refers to the moment when the tax authorities can claim the value of the value added tax.

There are situations when the chargeable event precedes the chargeability of the tax, such as:

- when the invoice is issued before the delivery of the goods or the provision of the service. In this case, the chargeability occurs at the same time as the invoice date;
- when the advance is collected before the delivery of goods or services. The tax becomes chargeable at the time of receipt of the service, etc.

For imports of goods, the tax becomes chargeable when the import duties for those goods are generated, in accordance with customs legislation.

Table 4. Elements that characterize the chargeability of the tax and the right to deduct

Characteristics	Description
Scope of the right of deduction	<ul style="list-style-type: none"> Any person who purchases goods or services that will be used to carry out taxable operations or operations obtained as a result of the delivery or provision of services, on foreign territory.
Conditions for exercising the right of deduction	<ul style="list-style-type: none"> The tax should be related to an intra-community acquisition of goods; The purchased goods must be accompanied by an invoice; The goods transported or dispatched must be accompanied by a self-bill issued in the Member State; The payment of the tax related to the purchased goods or the registration of this tax in the statement of the fiscal period, as well as the collected tax; The possession of the customs documents necessary for import, as well as the proof of payment of VAT in customs.
VAT deductibility	<ul style="list-style-type: none"> Right of deduction for the purchase of raw materials, consumables, energy, fixed assets and inventory items; Right of deduction for goods and services that are reflected in production costs.
VAT non-deductibility	<ul style="list-style-type: none"> The tax related to the amounts paid in the name and on behalf of the client, which is then settled; The tax related to the amounts collected in the name and on behalf of another person, which are not included in the tax base for deliveries or services; The tax due or paid for the purchase of alcoholic beverages and tobacco products.

Source: Author's contribution.

■ VAT cash accounting system

The VAT cash accounting system can be applied only by taxpayers registered for **VAT purposes**, established for tax purposes in Romania, with a turnover taken over from the previous year that should not exceed the ceiling of **2,250,000 lei**. This ceiling is determined by summing the deliveries of goods and services taxable or exempt from VAT and the value of operations obtained from economic activities delivered/performed abroad.

However, there are a number of categories of entities that cannot opt for this system, such as:

- taxable persons registered directly or through a tax representative in Romania;
- taxable persons who are established in Romania through a fixed office (branches or secondary offices that do not have legal personality), but that have their registered office of economic activity outside Romania.

The companies that have opted for this system have the obligation to mention applying the VAT cash accounting system on the invoices that they issue. As a generally applicable rule, the VAT cash accounting system applies only if **the place of delivery/service is Romania**.

Once the ceiling has been exceeded, taxable persons are required to submit Form 097 “Notice on the application of the VAT cash accounting system” in order to notify the tax authorities. By submitting this notification, it is requested to cease the application of this system. If the notification is not submitted, the tax authorities will deregister the taxable person ex officio.

In conclusion, there are two important components related to VAT cash accounting system, namely:

Table 5. Chargeability of VAT

Supplier	Beneficiary	Chargeability of VAT
Applies VAT cash accounting system.	Applies VAT cash accounting system.	VAT is collected when the invoice is paid.
Applies VAT cash accounting system.	Doesn't apply VAT cash accounting system.	VAT is collected when the invoice is paid.
Doesn't apply VAT cash accounting system.	Applies VAT cash accounting system.	VAT is collected when the invoice is issue.
Doesn't apply VAT cash accounting system.	Doesn't apply VAT cash accounting system.	VAT is collected when the invoice is issue.

Source: Continuous professional development material.

Table 6. Deductibility of VAT

Beneficiary	Supplier	Deductibility of VAT
Applies VAT cash accounting system.	Applies VAT cash accounting system.	VAT is deducted when the invoice is paid.
Applies VAT cash accounting system.	Doesn't apply VAT cash accounting system.	VAT is deducted when the invoice is paid.
Doesn't apply VAT cash accounting system.	Applies VAT cash accounting system.	VAT is deducted when the invoice is paid.
Doesn't apply VAT cash accounting system.	Doesn't apply VAT cash accounting system.	VAT is deducted when the invoice is issued.

Source: Continuous professional development material.

In a situation in which transactions take place between affiliates, the VAT cash accounting system is applied in a different way, namely: the VAT is collected on the date of the invoice, and not on the date of collection, and its deduction takes place at the time of payment of the invoice (if the entity applies this system).

Table 7. Chargeability and deductibility of VAT

Supplier	Beneficiary	Chargeability of VAT
Applies VAT cash accounting system.	Applies VAT cash accounting system.	The supplier collects the VAT when the invoice is issued. The beneficiary deducts the VAT when the invoice is paid.

Supplier	Beneficiary	Chargeability of VAT
Applies VAT cash accounting system.	Doesn't apply VAT cash accounting system.	The supplier collects the VAT when the invoice is issued. The beneficiary deducts the VAT when the invoice is issued.
Doesn't apply VAT cash accounting system.	Applies VAT cash accounting system.	The supplier collects the VAT when the invoice is issued. The beneficiary deducts the VAT when the invoice is paid.
Doesn't apply VAT cash accounting system.	Doesn't apply VAT cash accounting system.	The supplier collects the VAT when the invoice is issued. The beneficiary deducts the VAT when the invoice is issued.

Source: Continuous professional development material.

Therefore, in the situation in which the collection of invoices is done for longer periods of time, and the value of purchases is not so high as to generate a refundable VAT, it would be advisable to opt for the application of the VAT cash accounting system.

To be continued...

References

1. Hoanță, N. (2000), *Economie și finanțe publice*, Editura Polirom, Iași.
2. Motrea, D.M., Cernușca, L. (2017), *Situații de anulare și redobândire a codului de înregistrare în scopuri de TVA și efectele acestora (I)*, CECCAR Business Magazine, nr. 6, <http://www.ceccarbusinessmagazine.ro/situatii-de-anulare-si-redobandire-a-codului-de-inregistrare-in-scopuri-de-tva-si-efectele-acestora-partea-i-a1676/>.
3. Narayan, P.K. (2003), *The Macroeconomic Impact of the IMF Recommended VAT Policy for the Fiji Economy: Evidence from a CGE Model*, Review of Urban and Regional Development Studies, Vol. 15, No. 3, pp. 227-236.
4. Popa, A.F. (2016), *Curs de dezvoltare profesională membri – Fiscalitate*, CECCAR.
5. Tufan, C., Tempea, I. (1999), *Taxa pe valoarea adăugată în România*, Editura All Beck, București.
6. Vâscu, T. (1995), *Impactul TVA asupra trezoreriei firmei*, Impozite și taxe, nr. 111.
7. Vilaia, D. (2005), *Unele considerații privind evoluția TVA*, Impozite și taxe, nr. 3, 4, 5.
8. Minister of Public Finance, *Sisteme de impozitare în Uniunea Europeană*, http://discutii.mfinante.ro/static/10/Mfp/trezorerie/sisteme_imp_UE_directe_indir_contributii.pdf.
9. Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates), Official Journal No. L 316/31.10.1992.
10. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Official Journal No. L 347/11.12.2006.
11. Council Directive 2013/43/EU of 22 July 2013 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud, Official Journal No. L 201/26.07.2013.

12. First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, Official Journal No. L 65/14.03.1968.
13. Government Ordinance No. 3/1992 on value added tax, Official Gazette No. 288/12.12.1995.
14. Government Emergency Ordinance No. 84/2016 for the amendment and completion of some normative acts in the financial-fiscal field, Official Gazette No. 977/06.12.2016, as subsequently amended and supplemented.
15. Law No. 345/2002 on value added tax, Official Gazette No. 653/15.09.2003.
16. Law No. 227/2015 on the Fiscal Code, Official Gazette No. 688/10.09.2015, as subsequently amended and supplemented.
17. Order of the Minister of Public Finance No. 3417/2009 for the approval of the Instructions for the application of simplification measures in the field of value added tax on multi-party operations in the Community, related to works on tangible movable property, and the Instructions for the application of simplification measures in the field of value added tax the returns of goods in the community space and the fiscal treatment of the repairs performed during the warranty and post-warranty period, Official Gazette No. 914/28.12.2009.
18. Order of the President of the National Institute of Statistics No. 337/2007 regarding the update of the Classification of activities in the national economy – CAEN, Official Gazette no. 293/03.05.2007.
19. Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, Official Journal No. L 26/31.01.1977.
20. Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, Official Journal No. L 145/13.06.1977.
21. Case-law from the Court of Justice of the European Union.
22. <https://dexonline.ro/>
23. <https://europa.eu/european-union/>
24. <https://insse.ro/cms/>