

Tax & Legal Weekly Alert

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VAT split payment – the amendments to the final form of the law, sent for approval to the President

The law for approving the Ordinance regarding the VAT split payment was approved by the Chamber of Deputies and sent for approval to the President.

The most important amendment refers to the application of the VAT split payment system only by the companies having VAT debts or in insolvency. We highlight below the main changes approved by the Parliament.

The procedure for setting-up the sole fiscal group was amended (through Order 3480 of 14 December 2017)

The main amendments refer to:

- The tax body in charge with the management of the group;
- Changes brought to the form for registering/amending the sole fiscal group.

Obligations to declare to the Environmental Fund - year-end checks: electrical and electronic equipment, batteries and accumulators, packaging

The economic operators placing on the market electrical and electronic equipment („EEE”), portable batteries and accumulators ("B/A") owe a new contribution of 4 Ron / kg (EEE and B/A), or 20 Ron / kg (for lighting equipment), for the difference between the quantities of EEE, B/A placed on the market and the quantities ascertained by the Environmental Fund Administration (EFA) as placed on the market (until 31 December 2017).

Procedure for the technical approval of the models of electronic cash registers - draft

The draft of Order regarding the approval of the Procedure for the technical approval of the models of electronic cash registers defined in art. 3 alin. (2) of Emergency Ordinance no. 28/1999 regarding the obligation of the economic operators to use electronic cash registers was published by the Ministry of Public Finance on 18 December 2017:

http://www.mfinante.gov.ro/pagina.html;jsessionid=PAWhtsFC3uZsjkdDHLkdbSt_IB-QEdILB4qUEAQp.slave2:server22?categoriebunuri=proiecte-acte-normative&pagina=acasa&locale=ro&menu=Transparenta

VAT split payment - the amendments to the final form of the law, sent for approval to the President

The Ordinance 23/2017 (currently in force) will be amended through its approving law which must be approved by the President (as per the law in maximum 20 days from its receipt, if the President does not request its re-examination by the Parliament).

We highlight below, the main amendments approved by the Parliament:

- The VAT split payment will be mandatory starting with 2018 only for the companies *which have / will have outstanding VAT debts* (with the exception of those having enforcement procedures suspended) or *which are under insolvency proceedings*, as per the below table:

Category	Start date of applying the VAT split payment system
Taxpayers registered for VAT purposes who have at 31 st December 2017 outstanding VAT debts higher than: - 15,000 RON for large taxpayers; - 10,000 RON for medium taxpayers; - 5,000 RON for the rest; if these debts are not settled until 31 January 2018.	1 March 2018
Taxpayers registered for VAT purposes who ,after 1 January 2018, have outstanding VAT debts (in the abovementioned thresholds) unpaid in 60 working days from their due date.	1st of the second month following the 60 working days deadline
Taxpayers registered for VAT purposes who: a) are under insolvency proceedings at 31 st December 2017 b) are under the insolvency proceedings starting with 2018	a) 1 March 2018 b) 1st of the month following the one when the insolvency proceedings commenced.

- The taxpayers registered for VAT purposes (regardless if they apply the VAT split payment system or not) must pay the VAT corresponding to acquisitions of goods/services performed from suppliers applying the VAT split system in their dedicated VAT account. As such, only public bodies not applying the system, taxable natural persons and companies not established for VAT purposes in Romania, which are not and do not have to register for VAT purposes are excluded from the split payment of VAT to a supplier who applies the system. We detail in the below table the method for performing the payments depending on the statute of the involved parties:

Application of the system (mandatory or optional)	Supplier	Client	How is VAT paid
	YES	YES	VAT split payment – from the client’s VAT account into the supplier’s VAT account
YES	NO	a) VAT registered client: payment from the current account into the supplier’s VAT account	

			b) Non-VAT registered client: payment from the current account into the supplier's current account → the supplier is obliged to move the money into its own VAT account
	NO	YES	VAT split payment – from the client's VAT account into the supplier's current account
	NO	NO	The VAT split payment does not apply – payment from the client's current account into the supplier's current account

- *The exclusion* of certain transactions from the application of the system:
 - the payment is not made directly to the beneficiary of the transaction / payments in the name and on account of another person;
 - payments made in kind or through compensation;
 - financing granted by credit institutions or non-banking financial institutions through assignment of receivables;
 - cash/card payments, cash substitutes, guarantees and escrow accounts.
- The possibility to allocate the paid amounts depending on the contractual provisions or upon the client's instructions, in case of partial invoice payments – in such cases the gross-up method shall not apply for establishing the amount which must be transferred into the VAT account of the supplier applying the system, as per the law proposal in any other cases.
- The increase of the deadline for the supplier to transfer the received VAT amounts into his VAT account from 7 to 30 working days, for the transactions for which he has such an obligation (e.g. cash/card payments, payments into its current account by persons which are not obliged to perform split payments, etc.)
- The elimination of the provision that the VAT account can be debited only with ANAF's approval; thus no approval is needed from ANAF for any of the cases included in the Ordinance for transferring the VAT amounts from the VAT account into the current account
- The elimination of the 50% penalty for cases where the client (obliged to pay the VAT split) does not pay the VAT into the supplier's VAT account and does not amend the situation in 30 working days. In case the client pays incorrectly the VAT into the supplier's current account, a penalty of 0.06% per day of the incorrectly paid amount shall apply, starting with the day of the incorrect payment.
- The possibility for the supplier to transfer itself the VAT cashed-in in its current account to its VAT account (obligation which lies with its client) – in this case, the penalty for the client will stop at the moment when the supplier transfers the respective VAT in its VAT account - the proof of transferring the amount in its VAT account by the supplier must be provided during a tax audit (by the client).
- Maintaining the benefit regarding the 5% reduction of corporate income tax / microenterprise income for the taxpayers who optionally apply the system, for the entire period during which they apply, regardless if the option was made in 2017 or in 2018.
- The option to withdraw from the system was included, through the submission of a notification:
 - At the end of the tax year, but no earlier than 1 year for those who opted for applying the VAT split payment system;

- After minimum 6 months from the date when the debts were settled or once the taxpayer is no longer under insolvency proceedings for those who apply mandatory the system.

Once the law will be published in the Official Gazette, we will revert with a notification on the topic.

The procedure for setting-up the sole fiscal group was amended (through Order 3480 of 14 December 2017)

More specifically:

- If any of the members are medium or large taxpayers, then the group will be managed by the tax body in charge with medium or large taxpayers; previously the group was managed by the tax body of the leader. Small amendments were also made to the form for setting-up/changing the sole fiscal group.

For further questions, please contact us.



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Obligations to declare to the Environmental Fund - year-end checks: electrical and electronic equipment, batteries and accumulators, packaging

The economic operators placing on the market electrical and electronic equipment („EEE”), portable batteries and accumulators (“B/A”) owe a new contribution of 4 Ron / kg (EEE and B/A), or 20 Ron / kg (for lighting equipment), for the difference between the quantities of EEE, B/A placed on the market and the quantities ascertained by the Environmental Fund Administration (EFA) as placed on the market (until 31 December 2017);

These contributions are paid annually. Therefore, operators who placed these products on the market in 2017 should declare the quantities by 25 January 2018 at the latest, in order to avoid additional payment obligations at the time of control by the Environmental Fund Administration.

Regarding the packaging contribution, you should pay close attention to the following situations identified in practice:

- check if you declare to EFA all types of packaging (primary, secondary, tertiary - pallets)
- ensure that the final recycler will provide you a proof of the quantities of packaging waste recycled on your company's behalf (even if packaging waste is exported / intra-Community delivered)
- if you have concluded a picking contract, consider who is the person responsible for the packaging added to the products
- circulation of reusable packaging is performed by implementing a specific procedure of these packages, including the deposit-system. Otherwise, the packaging will be considered placed on the market at each transaction.

For further questions, please contact us.



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