DEDUCTION OF THE VALUE-ADDED TAX

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Abstract:
The purpose of the paper is a synthesis of the accounting and fiscal aspects regarding the deduction of tax related to the acquisitions made by companies registered for purposes of the VAT. The paper underlines the particularities in the bookkeeping of taxable persons under the mixed VAT regime. The case studies, taken from the activity of Romanian trading companies, show and justify the solutions provided for the problem of VAT deduction.

Key words*: TVA, mixed regime, pro-rata, temporary, final.*

JEL classification *M41 – Accounting*

The taxable person, registered for purposes of the VAT that carries out or is to carry out both deductible and non-deductible operations is referred to as payer of the value-added tax with a mixed regime.

In compliance with article 127 of the Fiscal Code, a taxable person is any person that carries out, in an independent manner and regardless of the place, economic activities such as: (1) activities of producers, traders or service suppliers, including extractive and agricultural activities and free profession activities or activities assimilated to them; (2) exploitation of tangible or intangible goods for the purpose of obtaining incomes with a continuous character. The person that carries out both operations that allow for the quality of taxable person, in compliance with the provisions of article 127 of the Fiscal Code, and operations in the capacity of taxable person is referred to as partially taxable person.

Public institutions are not taxable persons for activities that are carried out in the capacity of public authorities, even if dues, fees, royalties or other payments are collected for carrying out such activities, except for the activities that would produce distortions of competition if the public institutions are treated as non-taxable persons.
Public institutions are taxable persons for activities carried out in the capacity of public authorities that are exempt from tax in compliance with art. 141. Public institutions are also taxable persons for the following activities: a) telecommunications; b) supply of water, gas, electric energy, thermal energy, agents of refrigeration and others of this nature; c) transport of goods and persons; d) services supplied in ports and airports; e) delivery of new goods produced for sale; f) the activity of commercial fairs and exhibitions; g) warehousing; h) activities of commercial publicity bodies; i) activities of travel agents; j) activities of stores for the staff, canteens, restaurants and other similar establishments; k) activities of public radio and television stations. The deduction of tax assignable to the acquisitions made by a taxable person with a mixed regime is to be determined in accordance with the provisions in article 147 of the Fiscal Code.

The partially taxable person is not entitled to deduction for acquisitions that are intended to carry out activities for which it does not have the quality of taxable person.

When the partially taxable person, in capacity of taxable person, carries out both activities that allow the right of deduction and activities that do not allow the right of deduction it is considered taxable person with a mixed regime. The partially taxable person may request a special pro-rata if different journals cannot be kept for the activities that allow the right of deduction and the activities that do not allow the right of

deduction. For a better understanding of the provisions concerning the deduction of tax related to the acquisitions, the table number 1 shows the synthesis of the fiscal provisions regarding this problem.

Table no. 2 – Classification of taxable operations

<table>
<tr><th>Nr. crt.</th><th>Classification of taxable operations, in accordance with art. 126 of the Fiscal Code</th><th>Provisions regarding VAT deduction, in compliance with art.147 of the Fiscal Code</th></tr>
<tr><td>1.</td><td>Taxable operations, for which the norms provided in art. 140 of the Fiscal Code are to be applied</td><td rowspan="2">Acquisitions that are intended exclusively to carry out operations that allow the right of deduction, including investments that are intended to carry out such operations, are to be mentioned in a separate column in the purchase journal and the value-added tax related to such is to be entirely deducted.</td></tr>
<tr><td>2.</td><td>Exempt operations with right of deduction, for which value-added tax is not payable, but a deduction of the value-added tax owed or paid for acquisitions are allowed. In the present title, such operations are provided in art. 143 - 144^1</td></tr>
<tr><td>3.</td><td>Exempt operations without right of deduction, for which value-added tax is not payable and a deduction of the value-added tax owed or paid for acquired goods or services are not allowed. In the present title, such operations are provided in art. 141 of the Fiscal Code</td><td>Acquisitions that are intended exclusively to carry out operations that do not allow the right of deduction, as well as investments that are intended to carry out such operations, are to be mentioned in a separate column in the purchase journal and the value-added tax related to such is not to be deducted.</td></tr>
<tr><td>4.</td><td colspan="2">Acquisitions for which the destination is not known, respectively if they are to be used to carry out operations that allow the right of deduction or operations that do not allow the right of deduction, or for which it is not possible to determine to what extent they are used or are to be used for operations that allow the right of deduction and operations that do not allow the right of deduction, are to be mentioned in separate column in the purchase journal and the value-added tax related to such acquisitions is to be deducted based on pro rata</td></tr>
</table>

Pro rata is to be determined as a ratio between: ● as the numerator the total sum, without taxation, of the operations consisting of goods delivery and supply of services that allow the right of deduction, including subsidies directly connected to their price; ● as the denominator, total sum, without taxation, from the numerator and incomes obtained from operations consisting of goods delivery and supply of services provision that do not allow the right of deduction plus allocations, subsidies or other amounts received from the state budget or local budgets for the purpose of financing activities that are exempt without the right of deduction or that are not within the scope of application of the value-added tax. The elements presented in table number 2 are not to be taken into account in the calculus of pro rata.

Table no. 2 Synthesis of fiscal regulations regarding the elements excluded from the computation of pro rata.

No	Elements excluded from the computation of pro rata		Legal basis
1.	The value of any supply of capital goods that have been used by the taxable person in its economic activity;		
2.	The value of any goods delivery or supply of services towards itself made by the taxable person and provided for in art. 128 paragraph (4) and art. 129 (4), as well as the transfer provided for in art. 128 (10);		
	Art. 128 (4) The following operations are assimilated to the delivery of goods with payment:	Art. 128 (4) refers to operations related to deliveries: a) the taking over by taxable persons of movable goods acquired to be used for purposes that are not related to the carried out economic or b) to be made available to other persons for free or c) or to be used for operations that do not allow the right to total deduction, if the value-added tax for such goods or for the component parts of the goods was wholly or partially deducted;	
	Art. 128 (4) letter c) the taking over by a taxable person of movable tangible goods acquired or produced by it, other that the capital goods provided for in art. 149 (1) letter a), to be used for the purpose of operations that do not allow total right of deduction, if the value-added tax for such goods was wholly or partially deducted at the Acquisition date;		
	Art. 128 (4) letter d) goods discovered as missing, with the exception of: goods destroyed as a result of natural catastrophes or other cases of force majeure; goods in the nature of inventory that are qualitatively damaged; discarded fixed tangible assets; perishables, within the limits provided by law ;		
	Art .129 (4) The following operations are assimilated to the supply of services with payment:	Art .129 (4) letter a) the temporary use of goods that are part of the assets of a taxable person for purposes that are not related to its economic activity or to be made available for the use of other persons for free, if value-added tax for such goods was wholly or partially deducted; b) the supply of services performed for free by a taxable person for purposes that are not related to its economic activity, for the personal use of his/her employees or other persons.	
	Art. 128 (10) Assimilated to paid intra-community delivery the transfer to a taxable person of goods resulted from its economic activity in Romania to another EU member state, except for non-transfers.		
3.	The value of operations provided for in art. 141 (2) letter a) and b).	Art. 141 a) supply of financial and banking services: b) insurance and reinsurance operations, as well as the supply of services in connection with insurance and/or reinsurance operations that are performed by persons who intermediate such operations; c) immovable operations of supply, renting, leasing, tenancy, and other similar operations in connection with immovable goods other than those provided for at letter a), as long as they are ancillary to the main activity.	

In conclusion, the operations assimilated to delivery of goods and supply of services that do not lead to income entries are not taken into account in pro rata computation.

The Fiscal Code distinguishes between:

- Final pro-rata;

- Temporary pro-rata;
- Special pro-rata

Pro-rata is determined on an annual basis, and its computation includes all the operations for which the tax becomes chargeable over the calendar year. Final pro-rata is determined as percentage and it is rounded to the next unity figure. The document showing the computation of final pro rata is attached to the tax settlement of accounts for the last fiscal period.

Pro-rata temporarily applicable for a year is either final pro-rata determined for the preceding year or an estimated pro rata.

The estimated pro-rata is to be applied to taxable persons for which the rate of operations that allow the right of tax deduction within the total of operations is changed in the current year as compared to the preceding year and is based on operations forecasted to be carried out during the current year.

Taxable persons are required to communicate to the territorial fiscal organ the level of the temporary pro rata to be applied, as well as the manner of determining such pro rata, at the beginning of each fiscal year, not later than January 25th. In the case of a new-registered taxable person, pro-rata temporarily applicable is the pro-rata estimated on the basis of operations forecasted to be carried out during the current year that should be communicated when the taxable person deposits the tax settlement of accounts at the latest.

The deductible tax in a calendar year is determined temporarily as shown in formula number 1.

Formula no.1: $Td = deductibleVATxTp\%$

Where: Td =temporary deduction; deductible VAT for each fiscal period; Tp% temporary pro-rata.

Final deductible tax over a calendar year is determined as shown in formula no. 2

Formula no.2: $Fd = deductibleVATovercalendaryearxFp\%$

Where: Fd = final deduction; Fp% = final pro-rata.

The settlement of the deductible tax is done at the end of the year, as shown in formula no. 3.

Formula no. 3 $Fd - Tp = \pm S$

Where: Fd =final deduction; Tp= temporary deduction; R = settlements.

The result of the subtraction, S, either plus or minus, fits into the tax settlement of accounts se for the last fiscal period of the year, or into the tax settlement of accounts for the last fiscal period of the taxable person in the case of registration revocation.

Special pro-rate approved by the Ministry of Public Finance, by the specialized directorate, upon the request of taxable persons, based on the justification presented, when the pro rata calculated according to provisions of the present article do not ensure the correct determination of the tax to be deducted.

Accounting Law no. 82/1991 provides in art. 6 that any operation is to be written down when being carried out, in a document that is the basis of the bookkeeping recording

As regards VAT, the regulations and rules for the application of article 146 of the Fiscal Code provide, at no. 46, that the justification of tax deduction is to be done only on the basis of the documents provided for in article 146 (1) of the Fiscal Code or other documents that contain at least the information provided for by article 155 (5) of the Fiscal Code, except for the simplified invoice provided for at no 78.

The documents provided for by article 146 of the Fiscal Code are: invoice, customs import declaration or a supportive document issued by the customs authorities where the taxable person is recorded as goods importer regarding taxation, as well as

the documents to certify the payment of the value added tax by the importer or by any other person in his place.

In the case of loss, embezzlement or damage of the original copy of the supportive document the beneficiary should ask the supplier for a duplicate where it is stated that the duplicate is to replace the original copy of the document.

Tax deduction for the purchased fuels, can be justified with fiscal invoices issued under Government Emergency Ordinance no.28/1999 on the obligation of economic agents to use electronic cash registers, subsequently amended and supplemented including by Law nr. 64/2002, republished with subsequent amendments, if stamped and with the name of the buyer and the registration number are provided.

Invoices or other documents issued by a taxable person in the name of an employee on business trip can be used for tax deduction if the travel expense report is attached. This term is also to be applied in the case of the personnel made available for the managers of a trading company by a taxable person.

Case study 1:

A taxable legal person with a mixed VAT regime is taken as an example. The core business is the production and mechanizing of pastry, while the additional business is the renting out of own immovable property. The VAT for pastry goods delivery is 19%. The renting out of immovable property is VAT exempt operations without right of deduction, art. 141 (2) letter e). The owner did not choose to pay the tax for the renting operations. The fiscal period is a month.

In January 2009 crude materials for pastry were purchased, the cost being of 8.000 lei, plus 19% VAT, and machinery that does not require fixing, at the purchase price of 10.000 lei, plus 19% VAT.

Law: in accordance with the provisions of article 147 (3) of the Fiscal Code, the acquisitions of that are intended exclusively to carry out operations that allow the right of deduction, including investments that are intended to carry out such operations, are to be mentioned in a separate column in the purchase journal and the value-added tax related to such is to be entirely deducted.

On the basis of invoice no. 1001/05.01.2009 and the reception note, the purchase of crude materials is recorded:

%	=	401 <<Suppliers>>	9.520 lei
301 <<Crude materials>>			8.000 lei
4426 <Deductible VAT>>			1.520 lei

On the basis of invoice no. 2028/08.01.2009 and the certificate of setting in motion, the purchased machinery is recorded:

%	=	404 <<Fixed assets suppliers >>	11.900 lei
2131 <<Technological equipment>>			10.000 lei
4426 <Deductible VAT>>			1.900 lei

The same taxable legal person receives, in January, the electricity bill for the rented building. The total value of the bill is 4.760 lei, including 19% VAT.

Law:

In compliance with the provisions of art.147 (4) of the Fiscal Code, the acquisitions of that are intended exclusively to carry out operations that do not allow the right of deduction, as well as investments that are intended to carry out such operations, are to be mentioned in a separate column in the purchase journal that is to be prepared separately for such operations and the value-added tax related to such is not to be deducted.

Invoice no. 800015/31.01.2009, regarding the electricity consumption for the rented building is recorded:

%	=	401 <<Suppliers>>	4.760 lei
605 <<Electricity and water expenses >>			4.000 lei
4426 <Deductible VAT>>			7.60 lei

And the tax that becomes non deductible:

635 <<Expenses on taxes, fees and assimilated disbursements>>	=	4426 <Deductible VAT>>	760 lei

The registration done with the purpose to reflect the non deductible tax in the debt account 635 << Expenses on taxes, fees and assimilated disbursements >> is based on the provisions the Methodological standards for the implementation of article 21 of the Fiscal Code.

With regard to this situation, in practice the non deductible VAT, appropriate to the acquisition of depreciable assets, is included in the entry value of those assets. This approach is based on the provisions of HG 610/2005, section 52 (4), on the implementation of article 148 of the Fiscal Code, but these conditions have lost their present interest, due to the amendments to the Methodological standards, including HG 1618/2008.

Case study 2:

A legal person with mixed VAT regime, for which the acquisition of goods and services cannot be separated by destinations, is analyzed.

In 2008 the following operations have been carried out:

● Deliveries of goods to a customer in Italy, that communicates the supplier a valid code for registration for purposes of the VAT (exempt that allow the right of deduction)……1.800.000 lei;

● Deliveries of goods on the internal market, taxable at 19%.....1.248.000 lei;

● Exempt service supply, that do not allow the right of deduction…….. 240.000 lei.

Total……...3.288.000 lei

The acquisitions of goods and services are amounting to 2.700.000 lei, and cannot be separated by destination, the VAT applied being of 19%;

A temporary pro-rata of 85 % has been applied for the period of June – November:

It is considered that 1/12 of the total number of operations mentioned above was conducted in December. The fiscal period is the month. The master summary sheet of the accounting notes drawn in 2008 is shown in table no 3.

No	Explanation	Debt	Credit	11 months	Month 12.
1.	Intra-community supplies	411 Customers	70x earnings	1.650.000	150.000
2.	Internal market supplies, taxable at	411 Customers	%	1.361.360	123.760

	19%		70x earnings	1.144.000	104.000
			4427 collected VAT	217.360	19.760
3.	Exempt service supply that do not allow the right of deduction	411 Customers	704 earnings	220.000	20.000
4.	Purchases	%	401 suppliers	2.945.250	267.750
		3xx Stock		1.980.000	180.000
		6xx Services		495.000	45.000
		4426 deductible VAT		470.250	42.750
5.	Non deductible VAT	635 expenses	4426 deductible VAT	70.538*	2.992 **

* Non deductible VAT is the result of temporary pro-rata application 470.250 - 470.250x85% = 70.538 lei;

The master summary sheet of VAT accounts closing notes for the first 11 months:

%	=	4426 "Deductible VAT"	399.712 lei
4427 "Collected VAT"			217.360 lei
4424 "Recovered VAT"			182.352 lei

** The deductible VAT id the result of temporary pro-rata application 470.250 -70.538 =399.712 lei

Final pro-rata $\frac{1.800.000 + 1.248.000}{3.288.000} = 93\%$

Deductible VAT settlement:

a) deducted VAT for the first 11 months 470.250 x93%.....437.333 lei

b) VAT deducted in the preceding settlements of accounts……399.712 lei

c) Settlements a) –b) …….....37.621 lei

The tax resulted from the application of final pro-rata is regularized in December, thus the deductible VAT will increase with 37. 621 lei:

635 << Expenses on taxes, fees and assimilated disbursements >>	=	4426 <<Deductible >> VAT>>	-37.621 lei

The closing of VAT accounts, for the last fiscal period of 2008:

%	=	4426 "Deductible VAT"	77.379* lei
4427 "Collected VAT"			19.760 lei
4424 "Recovered VAT"			57.619 lei

The existence of correct and complete accounting reports of economic operations is of major importance, especially in the case of the persons registered for purposes of the VAT. If at the end of the fiscal period the VAT to return is of minimum 5.000 lei, the effective recovery of the amounts required by settlement can be done as a

result of tax audit. The existence of incomplete accounting reports or of documents that do not observe the provisions of the law is sanctioned with non-recognition of the deductibility of VAT amounts and the calculation of accessories appropriate for failure to pay the nondeductible amounts on time.

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