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cover article

Split payment of VAT

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NAFA issued the order 23/2017 published in the Official Gazette no. 706 of 31.08.2017 regulating the split payment of VAT.

Under the new regulations, as of January 1, 2018, every taxable person or public institution registered for VAT purposes has the obligation to own and use at least one VAT account for the collection and payment of VAT.

Who applies split payment?

All taxable persons and public institutions are required to pay the VAT afferent to the purchases of goods and services in a VAT account of the supplier/ service provider.

> ***Exception:*** *taxable natural persons who are not registered and are not required to register.*

To which operations does the split payment apply?

To all deliveries of goods and provision of services that have the place of taxation established in Romania, including for advances.

> ***Exception:*** *the operations for which the beneficiary is liable to pay VAT and the operations to which the special regimes apply*

What account is VAT paid from?

Persons registered for VAT purposes shall pay exclusively from VAT accounts.

> ***Exception:*** *the rule does not apply for payments in cash, by card or by using cash substitutes.*

How is the VAT afferent amount established?

According to the invoices issued by the suppliers or, in the case of partial payments by applying the increased amount (extracting the VAT amount from the total payment), covering with priority the amounts with higher quotas.

Where can VAT account be opened?

With treasury units or credit institutions observing the restrictions imposed by Order 23/2017.

How are VAT accounts opened?

VAT accounts can be automatically opened by credit institutions (if they opt for automatic opening), and then they shall notify the holders on the account, the conditions and the costs attached while giving them the opportunity to opt out of the VAT account at no additional cost, within 90 days, if no transactions have been made in that account. VAT accounts will also be opened automatically by the State Treasury units within the competent tax authority in their administration, based on the List of Economic Operators registered for VAT purposes prepared and transmitted in the IT system by the competent tax authorities of NAFA. Within 90 days, taxable persons will decide whether to maintain the VAT account (and provide the necessary documents to open the account) or decline it (at no extra cost). In the event that an automatic account is not opened for them, taxable persons may address opening applications to either the Treasury or a credit institution.

Where are VAT account listed?

VAT accounts opened with treasury units are published on the website of the Ministry of Public Finance or NAFA and are periodically updated (the list will include the holder, fiscal code, IBAN and treasury unit).

Which operations are permitted in the VAT accounts?

Only the operations described in Order 23/2017 are permitted. No other uses / withdrawals from the VAT account are accepted. VAT reimbursement is made in a different account than the VAT account, unless otherwise required by the taxable person. For transfers from VAT accounts other than payments to suppliers, verification and approval by the tax authority is required (the transfer is approved within 3 working days of the submission of the application).

What are the obligations of taxable persons regarding collected VAT?

Here are some of the obligations of taxable persons:

- to notify to the suppliers / providers and beneficiaries the VAT account (s);
- to transfer/ deposit within 7 working days from collection in the VAT account the VAT amounts afferent to card payments;
- to transfer/ deposit within 7 working days of receipt in the VAT account the VAT amounts that were not paid by the beneficiaries into the VAT account;
- to pay/ deposit within 7 working days of receipt in the VAT account the VAT amounts afferent to proceeds by credit instruments issued prior to January 1, 2018;
- to pay/ deposit within 7 working days of receipt in the VAT account the difference between the VAT afferent to cash proceeds and the VAT afferent to cash payment made in one day;

- to pay/ deposit within 7 working days of receipt in the VAT account the VAT amounts afferent to proceeds from invoices issued before January 1, 2018.

Can the VAT account be foreclosed?

The VAT account can be foreclosed only for the payment of VAT owed to the state budget and for the payment of other outstanding budgetary obligations or on the basis of certain writs of enforcement, according to the law, for the VAT afferent to certain acquisitions of goods and / or services.

Can split payment of VAT take effect before January 1, 2018?

It is possible to opt for the application of the split payment of VAT starting October 1, 2018. The persons opting in might benefit from certain facilities (a 5% reduction of the fourth quarter income tax/ income tax on the microenterprise, the cancellation of the delay penalties for the main tax obligations representing VAT, outstanding on September 30, 2017, inclusively) if the conditions set out in Order 23/2017 are met.

Minor offences and sanctions

The sanctions provided by Order 23/2017 can be substantial, and thus it is necessary to correctly understand and apply the split payment of VAT and the obligations resulting from this system. Here are some of the sanctions:

- failure to pay the amount in the supplier's VAT account can lead to a penalty of 0,06%/day (up to 30 days) or 50% of the VAT amount (over 30 days);

- failure to pay the amount from the payer's VAT account can lead to a penalty of 0,06%/day (up to 30 days) or 10% of the VAT amount (over 30 days)

- failure to notify the VAT account can lead to a fine between lei 2000 and 4000 lei;

- failure to transfer/deposit the mandatory amount within 7 business days in the VAT account according to Order 23/2017 can lead to a penalty of 0,06%/day (up to 30 days) or 10% of the VAT amount (over 30 days).

**Source: Order 23/2017 on split payment of VAT*