

Generating Fact and VAT Exigibility in Romania and Switzerland – EU Member and Non-member States

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Abstract

Additionally, the added tax is paid in the case of the first installment, in order to reduce the taxable amount of the taxable amount. Impossible indulgence in traditional tradition and systems to improve the risk of eruption in this age was no longer satisfactory. In the European Court of Justice of the European Communities at the European Council of Brussels on 1 February 1993, the Council adopted a proposal for a Council Regulation on the financing of the European Social Fund for the development of the European Globalization Adjustment Fund. In Romania, the tax-deductible amount in the taxable income added differs according to the transaction rate and the stage of the national or intra-community response. The VAT's fair value is not the same as the cost of the investment under the VAT rate of some operations. In generally case, in Romania and Switzerland, this is the only reason for being the mainstay of delivery of goods and / or the cost of the acquisition of property. This is the date after which it is announced that it will be delayed.

Key words VAT, exigibility VAT, generating fact of VAT, tax rates, fiscality, direct taxation

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Introduction. Literature review

The value-added tax was introduced following the end of the First World War, which generated requirements to increase the income. The traditional indirect taxes and the profit taxation systems applied until that moment were not enough anymore (Bardopoulos, 2015). Before the introduction of the VAT, a cumulative tax on the turnover was applied at all steps the merchandises passed through: since the moment they exited production and until they reached the final customer (Schenk, Oldman, 2015).

VAT was conceived in 1920 by the German businessman Wilhelm Von Siemens (Ebril, Keen, Bodin & Summers, 2001). He has observed that a defect of the taxes applied until that moment was their very basic concept: waterfall taxation. The taxation thus performed could not be pretended by the customer. Therefore, the fiscal component of the goods' prices became greater with every stage existing between the producer and consumer. (Schenk & Oldman, 2015). The following year, in 1921, Thomas Adams, starting from the idea of Von Siemens, debates the concept of value-added tax in the United States (Ebril, Keen, Bodin & Summers, 2001).

As time passed, this basic idea was developed into a real system by Maurice Lauré, director of the French fiscal authorities. VAT was introduced for the first time in France, in 1954, followed by Senegal and Cote D'Ivoire in 1960. Toward the end of the 60s, the value added tax had been introduced in less than 10 countries. In 1989, the number of countries that have introduced the VAT was 48 between Europe and the Latin America (Charlet & Owens, 2010). In Europe, it was adopted starting with January 1st, 1970 by the countries member of the European joint Market, the definitive harmonization being achieved in 1977 (Şaguna & Radu, 2017). Currently, the value added tax is enforced in approximately 166 countries, which are advanced from the economical viewpoint, with the exception of the United States (OECD, 2016).

In the European agreement of association of Romania to the European Union, signed in Brussels on February 1st, 1993, it was stipulated that the harmonization of the Romanian fiscal law with the community one is one of the

fundamental conditions for Romania's integration into the European structures (Monitorul Oficial, 1993). Due to this reason, after applying the legal acts issued in order to prepare for the introduction of the new tax, VAT is introduced with enforcement starting July 1st, 1993, by the Government Order no. 3/1992 regarding VAT, re-published into the Romanian Official Gazette (Monitorul Oficial al României) no. 115 on May 6th, 1994, approved by Law no. 130/1992, thus definitively replacing the tax on circulation of merchandises.

In Romania, the legal framework in the field of the value added tax is different, depending on the type of transactions realized and the place where they were performed, on national or inter community plan. On local plan, the base law for the regulation of taxes and social contributions is represented by the Fiscal Code. The last modification and update of the Fiscal Code was approved by the Law no. 198/2018. The articles 265-334 of Title VII from the New Fiscal Code regulate the novelties introduced regarding the Value Added Tax. At the inter-community level, the Directive 2006/112/CE of the European Council from November 28th, 2006 is applied, it regards the joint VAT system and was published in the Official Journal of the European Communities no. L347 from December 11th, 2006, with subsequent modifications and completions.

In Switzerland, the value added tax is collected by the Confederacy based on article 13 of the Federal Constitution. It was adopted by popular vote on November 28th, 1993, after the Swiss citizens and Swiss cantons have rejected the previous projects, in 1977, 1979 and 1991 (Stockar, 2014). The tax was introduced in January 1st, 1995, on the basis of a Legal Order, and has replaced the taxation on turnover. The Order was replaced by the VAT Law (aLTVA), on January 9th 2001. Meanwhile, the Federal Council has approved a new Order regarding the Federal Law on the value added tax (aOTVA) (PricewaterhouseCoopers, 2016). Starting January 1st, 2010, a new law regarding the VAT was enforced: Federal Law no. RS6421.20 from June 12th, 2009, regarding the VAT and the Order no. RS642.201 from November 27th, 2009 (Hiny & Eckert, 2018). The new law was introduced with the purpose to simplify, consolidate and better take into account the needs of the users. At the European level, laws regarding VAT has experienced a permanent development and refinement during the last 60 years, and is continuously evolving and developing due to the complexity and importance of this system and the critics against it.

1. Research methodology and data.

The generating fact of the VAT represents the operation that, by its achievement, leads to the inclusion, under the incidence of VAT of some operations. In the general case, in Romania and Switzerland, this is considered as being the moment of delivery of goods and/or performance of services. After this date, penalties are calculated.

2. Results and discussions

In Romania, there are some particular cases regarding the inclusion under the influence of VAT of certain operations. For goods sold in consignment regime, it is considered the date at which the beneficiary becomes the owner of goods. For inventories offered to the customer, it is considered the date at which the customer withdraws the goods from the stock. For goods submitted for testing and compliance check, it is considered the date of their acceptance by the beneficiary. For fixed mobile goods, including real estate goods, the date considered is the date at which the transfer of the right to dispose of the goods as an owner occurred. In contracts where payments is due in rates, the date when the good was given away is considered. For successive services realized, cleared on the basis of work reports or similar documents, the date considered is the date when the work reports were issued or, depending on case, the date of their acceptance by the beneficiary on the basis of contract provisions. For deliveries of goods and services rendered that are made on a continuous manner, such as supplies of natural gas, electrical energy or phone, the date considered is the one specified in the contract, but no more than one year. For rental, leasing, concession or rent the date of payment specified in the contract is considered. For import, it is applied the date at which the operation is subjected to customs tax, agricultural or other community enforced taxes. For rendering services, the date when the service was concluded applies.

The exigibility of the tax is the right of the fiscal authority to demand to the VAT payer, at a certain date, the payment of the tax due to the state budget. The exigibility of the tax occurs simultaneously with the generating fact. In Romania, there are some particular cases regarding the exigibility of the tax. If the invoice is issued ahead of the generating fact, the date is considered when the invoice is issued. For advance payments made before the occurrence of the generating fact the date when the advance sum was received is considered. For goods or services delivered through automatic vending machines, game machines or other similar devices, the date when the cash is extracted will be applied. For intra-community deliveries and acquisitions, the 15th day of the month following the generating fact. In the case of persons who apply the system of VAT on receiving, the date of receiving or, if the invoice was not cleared, in the 90th calendar day since the facture was issued or since the issuance of invoice, if it was not correctly

issued. The exigibility of the payment is equivalent to the payment deadline for VAT to the budget. The deadline is calculated depending on the taxable period related to each person.

Table 1. Exigibility of VAT payment in Romania

Turnover realized in the previous year	Taxable period	Exigibility of tax payment
< 100.000,00 euro/year	Trimester	25 of the month following the concluded trimester
= or > 100.000 euro/year	Month	25 of the following month

Source: author's representation.

By option, contributors can decide that the taxable period is the semester of the year. If, during the previous year, activity was realized in less than three calendar months within a semester, there is possible to request to be enrolled in the semester taxable period. The exigibility in this case will be the day 25 of the month following the conclusion of the semester.

If, during the previous year, there was activity in maximum 6 calendar months within a year, the contributor can request to be included in the year taxation period. The exigibility of the payment, in this case, will be the day 25 of the month following the concluded year.

In Switzerland, the taxable period can be generally on trimester; semester case applies when the annual turnover does not go over 5.005.000 Swiss francs (CHF) and the total of the tax calculated on the basis of forfeit method does not go over 103.000 Swiss francs, monthly, on the basis of the request made by the contributor, when, regularly, the pre-tax is surpassed. So, on the basis of the request of the contributor, the competent authority (AFC) can decide other taxable periods, under determined conditions.

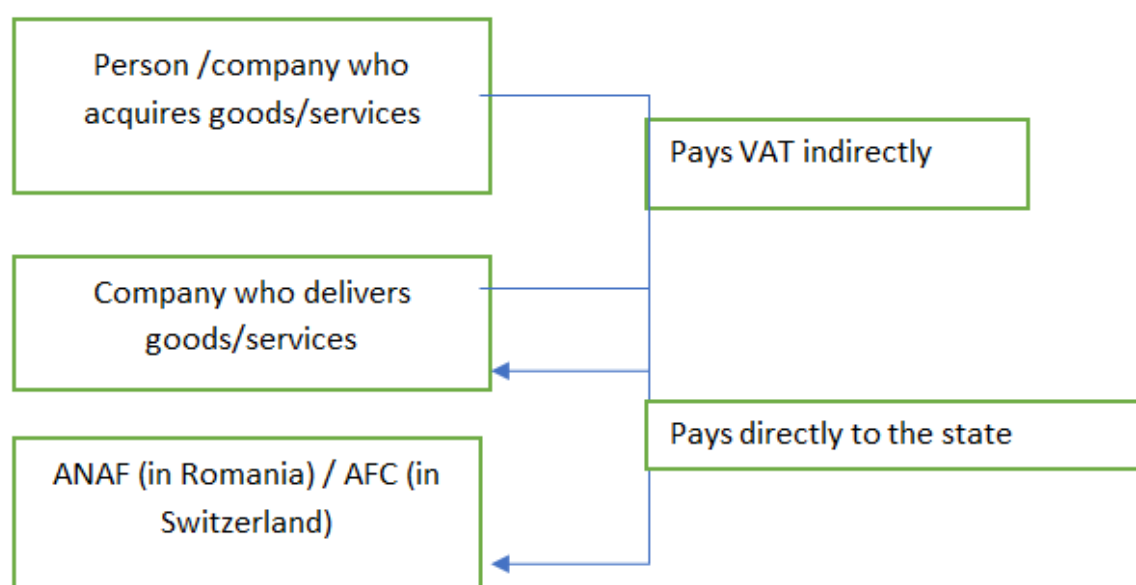


Figure no. 1. The VAT mechanism

Source: author's representation.

When VAT was introduced in Romania, a unique rate of 18% was applied for mandatory taxable operations and a 0% quota on the exports of goods and services made by the economic agents. Until the enforcement of regulations regarding the inclusion in the national laws of the transitional VAT regime, the evolution of the unique was almost imperceptible, excluding the year 1998, when it was increased from 18% to 22%, and the reduced quota from 9% to 11%. These rates were kept until 2000, when the standard rate was set at 19% and the reduced one was eliminated. In 2004, the VAT-free without right to be deduced was removed, and a quota of 9 was introduced for castles, museums, fair and expositions, education. This level of the reduced rate is still the same. In 2010, a decision is

made to raise the VAT from 19% to 24%, in order to comply with the budgetary deficit target of 6,8% of the GDP. This rate was maintained until 2016, when it was reduced to 20%, and in 2017 it reverted to 19%, in order to stimulate the economic development by increasing the consumption.

The Swiss federal constitution provisions the VAT rates. Subsequently, any modification of the VAT rates necessitates a mandatory referendum. In Switzerland, the standard VAT rates, over time, did not observed very high differences, in comparison with Romania, which has enforced a modification by 6 percent points between the years 1993-2010. In Switzerland, the standard rate was modified by only 1,2% pp. during the period 1995-2017.

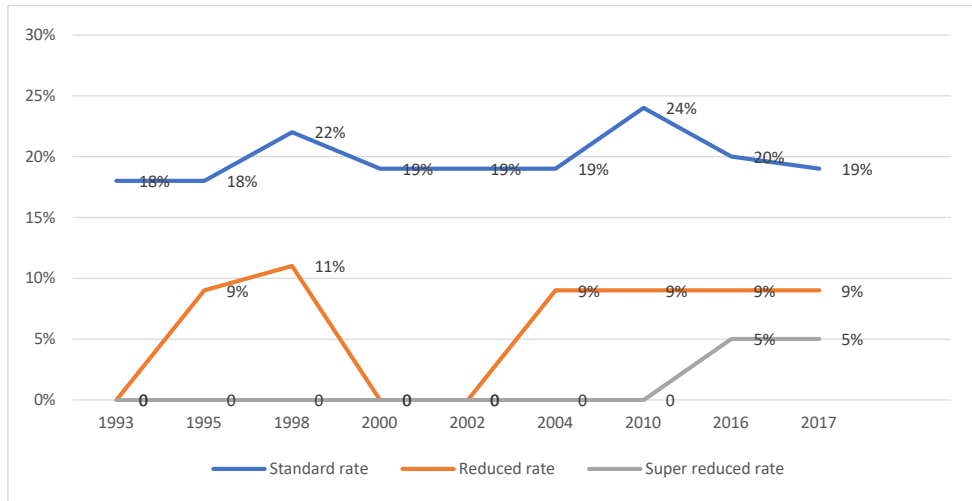


Figure no. 2. Evolution of the VAT rates in Romania

Source: author’s representation.

Since 2011 and until 2017, the VAT rates where 8% (standard), 3,8% (special tariff for accommodation) and 2,5% (reduced rate). A part of the VAT incomes (standard rate 0,4%, special rate for accommodation 0,2% and reduced rate 0,1%) was allocated to ensure financing, for a limited timespan, until the end of 2017, for handicapped people. Due to the fact that the reform of the pensions system was rejected, the VAT rates decreased starting from 2018. This led, also, to an adjustment of the net taxation ratios.

With all these, by the plebiscite on February 9, 2014, the citizens and cantons have approved the increase, by 0,1% of the three TVA rates, effective from January 1, 2018, to provide financing for the further development of the railway network – FERI (ESTV, CH).

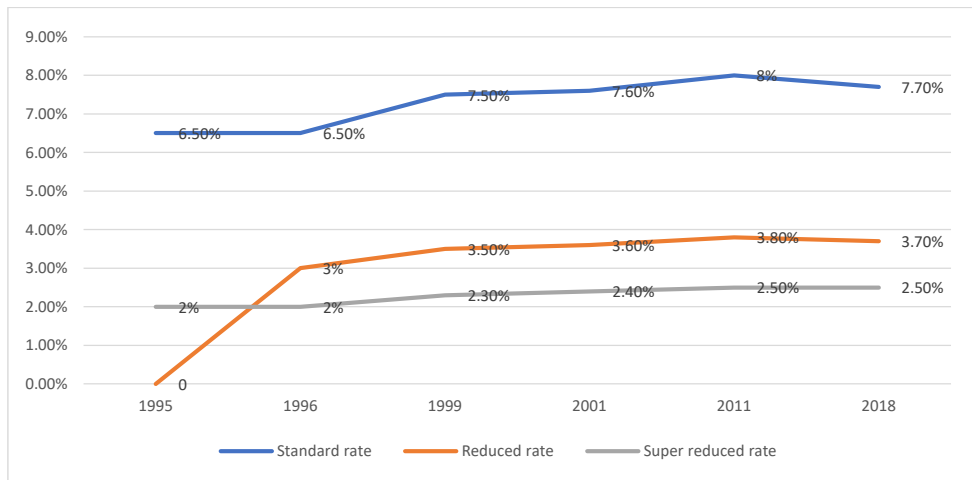


Figure no. 3. Evolution of the VAT rates in Switzerland

Source: author’s representation.

Conclusions

The value added tax is applied in a waterfall manner on each property or usance transfer occurred during the circulation of goods and services. Its burden actually falls on the direct consumer.

On the basis of comparative analysis, differences and similarities can be observed regarding the value added tax in Romania and the Swiss Confederation. The main difference of those two systems is the way in which VAT was introduced. Romania adopted the value added tax in the own fiscal system, while Switzerland subjected the introduction of this fee to popular vote, and it was introduced due to its apparent simplicity.

By analyzing in a comparative manner the laws regarding the value added tax, it is evident its complexity in Romania compared to Switzerland, because it is necessary to apply the European normative. If the European Union issues a new directive or regulation in the matter, Romania is forced to adapt the current law on the foundation of European norm, thus supporting important administrative expenses. Not only the European commission pointed, in countless occasions, that the fraudulent tax evasion in the field of VAT generates dis-functionalities of the internal market, favors illegal competition and, subsequently, leads to the substantial reduction of public income.

From this viewpoint, a generalization of the simplifying measures, as it has been done in Switzerland, can be an extremely useful attempt even if the fields in which those can be put into practice are limited by the provisions of the European directives in the area.

The complexity of this system, from the viewpoint of the application area, of the regime of deductions and surplus of information present in the VAT laws in Romania and Switzerland, creates an inequality in its application in various activity sectors, loss of time and expenses for all actors involved in the process. Numerous exceptions presented by the two systems lead to a distortion of competition. A company that runs activities exempted from VAT or applies a special regime, so a preferential fiscal treatment, causes a distortion of the competition, to the detriment of the incomes of companies that apply the standard VAT rate, 19% in Romania or 7,7% in Switzerland.

Another important aspect is the interaction with the fiscal administration. The application of the VAT system, correctly, on the base of legal provisions is extremely difficult and it's impossible to be made without any kind of mistake. Contributors must be extremely careful in respecting the terms specified by law and in ensuring that exact data are presented. If those are not correct or not submitted within due terms, penalties and fines are provisioned. It must be considered that, no matter how good are organized and presented in laws the fiscal aspects, they remain hard to understand without attention and perseverance in the study. According to international fiscal practice, it is demonstrable that a modern fiscal system should possess components that allow the quick information and education of the contributors regarding their obligations, regarding the correct elaboration of tax declarations, the correct recording in documents of incomes and expenses related to their activity, and also on the penalties and sanctions applicable when legal provisions are trespassed.

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