TZA CONSULTANŢĂ FISCALĂ

TAX ENTITY OF ŢUCA ZBÂRCEA & ASOCIAŢII

23 August 2017

Fiscal Bulletin

Summary:

VAT split payment and other new developments in the tax field

1. **Updated version of the Draft Ordinance on VAT split payment, published on 18 August 2017 ("Draft Ordinance")**
2. **Draft Ordinance amending and supplementing Law No. 227/2015 on the Tax Code – published on 7 August 2017 ("Draft amending the Tax Code")**

Dedicated account for VAT purposes

A new Draft Ordinance announced at the end of last week by the Ministry of Public Finance brought certain amendments to the VAT split payment mechanism, by postponing the application thereof and reducing the initial penalties.

However, this legislative initiative remains surrounded by controversy in the business environment, since it is to be expected to involve an application of significant additional (financial, human, technical) resources related to implementation and application, as concerns both the taxpayers and ANAF.

Please find below the main features of the VAT split payment mechanism, updated in accordance with the new Draft Ordinance:

1. **Means of operation and specific issues**

- The mechanism involves the use of a dedicated VAT account for the collection of VAT from clients and the payment of VAT to suppliers, except for payments by card and cash. The account shall be opened at a commercial bank or state treasury unit and shall contain in its structure the letters "TVA" (engl. VAT). The same dedicated account shall be used for the payment of the VAT to the State budget;
- VAT related to collections in cash, by card or cash substitutes (after the deduction of the VAT related to the similar payments made) must be transferred within 7 business days into the VAT account. Thus, the taxpayers will need to update their ERP systems / internal procedures in due time, as to be able to allocate the VAT amounts in the specific situations mentioned above as per the legal norms;

- Excess money availabilities of the dedicated VAT account may be transferred to another account of the titleholder only subject to ANAF's consent. It is not possible to make cash withdrawals from the dedicated VAT account. The new Draft Ordinance sets forth a deadline of no longer than 3 business days within which ANAF approves the transfer of the amounts from the VAT account to the titleholder's current account *(however, no penalties by ANAF are provided for failure to observe such deadline, nor are details on the checking procedure)*;
- The VAT split payment mechanism generates serious question marks regarding the practical approach of some commercial mechanisms which are very often used in practice, such as settlements and assignments of receivables (in relation of commercial receivables including VAT).

2. Application deadlines

- Postponement of the optional application from 1 September 2017 to 1 October 2017 and set-up of the Registry of persons who opt to apply the VAT split payment;
- Postponement of the mandatory application from 1 October to 1 January 2018;
- For the invoices issued before 1 January 2018 (or, as the case may be, before the date of opting to apply the mechanism), issuers have the obligation to transfer the related VAT amounts to the dedicated account, within no more than 7 business days from the collection of the invoices;
- Facilitations are provided for persons who opt to apply the VAT split payment during 1 October – 31 December 2017.

3. **Amendments concerning misdemeanours and penalties**

- A remedy period of 7 business days is provided for the remedy of errors.
- If errors are not remedied within the 7 business days, a penalty of 0.06% per day of the VAT shall be applied, not to exceed 30 days;
- After the 30-day deadline, for actions such as failure to transfer the payment into the supplier's VAT account or erroneous payment into the VAT account, a fine of 50% of the VAT amount shall be applied, and for actions such as the failure to transfer the VAT amounts from the titleholder's current account to the latter's VAT account or the payment of the VAT owed to the supplier from another account than the VAT account, a fine of 10% of the VAT amount shall be applied.

Other tax amendments

Separately, a Draft for amending the Tax Code has been published on the website of the Ministry of Finance two weeks ago, with the following among the most important amendments:

- Limiting reimbursement of expenses representing the value of the transferred receivables, within the threshold of 30% of their value plus the value of the profit resulting from the transfer thereof;
- Tax exemption for dividend profits.

alexandru.cristea@tuca.ro

Editors

Ţuca Zbârcea & Asociaţii Tax S.R.L. is the specialised tax consultancy entity of Ţuca Zbârcea & Asociaţii, offering a full range of advisory and compliance services. Ţuca Zbârcea & Asociaţii Tax S.R.L. covers transaction planning, operational tax advice, efficiency structures (tax optimization schemes), tax reviews and due diligence, tax authorities' audits and dispute resolution (including mitigating the risks and the potential impact of time-consuming disputes with local fiscal authorities), tax compliance and representation, as well as transfer pricing. Our team comprises seven tax consultants previously working in management positions with Big Four companies and the Ministry of Finance. The group cooperates closely with the firm's lawyers specialising in administrative law, as well as contentious-administrative disputes.

Ţuca Zbârcea & Asociaţii Tax S.R.L. is a proud member of A.R.S.I.T. - Asociaţia pentru Reformarea Sistemului de Impozite şi Taxe - a nonprofit organisation created in an effort to represent the voice of the Romanian taxpayer in relation to state authorities.

Alexandru Cristea
Tax Partner
+4 037 413 61 15
alexandru.cristea@tuca.ro

TZA CONSULTANŢĂ FISCALĂ
TAX ENTITY OF ŢUCA ZBÂRCEA & ASOCIAŢII

Şos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, Bucureşti, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro/tax