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APPLYING THE VALUE-ADDED TAX UNDER THE CONDITIONS OF PUBLIC-PRIVATE PARTNERSHIP

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Abstract: *This Article aims to study the main tax and accounting issues when applying the value-added tax under the conditions of public-private partnership from theoretical, conceptual and methodological viewpoints. The value-added tax is an indirect tax that draws most attention of both the State and private companies.*

Key words: *value-added tax, budget, right to deduction, refund/reimbursement, public-private partnership, public partner, private partner.*

JEL CLASSIFICATION: M 41.

INTRODUCTION

As a topic of high interest for taxation purposes, the value-added tax is certainly a consumption tax, which covers all phases of an economic circuit (inputs, production, and outputs/sale) and through which the State has the possibility to quickly collect money to the general consolidated budget. VAT administration is cumbersome and meticulous as it requires much time and effort on the side of both taxpayers and the Tax Service (reports, inspections, checks). VAT regulation is a separate yet relevant topic in the activity of public-private partnerships. On 23 November 2018, the Ministry of Finance (MoF) of the Republic of Moldova (RM) approved Methodological Guidelines on accounting peculiarities in the process of implementing public-private partnerships with the aim to govern the accounting issues arising in the process of executing public-private partnership contracts. However, these Guidelines failed to specify the peculiarities of VAT accounting and mirroring by the entities engaged in one of the contractual forms (work /service rendering, trust administration, civil society, lease, concession) of public-private partnership [3].

This Article aims to deal with tax and accounting issues when applying the value-added tax under the conditions of carrying out public-private partnership contracts from theoretical, conceptual and methodological viewpoints. Although the studied issue is wide, the Article will focus on conceptual terms and basic theoretical information, as well as on the correlation of accounts concerning the bookkeeping of VAT-related operations under the conditions of public-private partnership. The tax legislation, in particular the VAT legislation, has been used as material sources to write this Article. Relevant literature, monographs, research articles published in the Republic of Moldova, Romania and the European Union (EU) have been also reviewed to this end.

The research has been conducted based on the provisions of the Law on Public-Private Partnership No. 179/2008 [5], the Moldovan Tax Code No. 1163-XIII of 24.04.1997 [1], the Law on

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Accounting and Financial Reporting No. 287 of 15.12.2017 [4], the Law on Customs Tariff, No. 1380-XIII of 20.11.1997 [6], the Methodological Guidelines on accounting peculiarities in the process of implementing public-private partnerships [3] and based on relevant specialty bibliographical sources.

OUTCOMES AND DISCUSSIONS

The value-added tax (hereinafter referred to as VAT) is a state tax representing a form of payment to the budget of a portion of the value of goods supplied and services rendered that are subject to taxation on the territory of the Republic of Moldova, as well as a portion of the value of all taxable goods and services imported into the Republic of Moldova [1].

In Romania, the Tax Code, art.265 defines VAT as an indirect tax owed to the State Budget that is collected in compliance with the provisions of that Title [7].

Another VAT feature is that it is charged only in the country where the goods are consumed, not where they are manufactured. In this vein, it is stated that all goods exported outside the country boundaries are absolved of this tax, while the imported goods are subject to VAT levied in the appropriate manner.

In light of the ratio of VAT revenues at the EU level, it has been stated that VAT is the most important indirect tax, being framed in the general consumption taxes as a result of levying it on the overall sales.

It should be noting that the European Commission granted the status of a candidate country to the Republic of Moldova on 24 June 2022. Hence, in order to be in line with the EU standards in the area of tax administration, the Republic of Moldova shall begin the approximation of its legislation in compliance with the timetable set out by the Association Agreement, including the VAT legal framework, with the EU legislation, namely with *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax* (hereinafter referred to as Directive 2006/112/EC) [2].

Directive 2006/112/EC does not define the value-added tax, but sets out that the common system of VAT should result in neutrality in competition [2].

The Tax Code of the RM stipulated differential VAT rates as follows [1]:

- Art.96 (a) sets a standard rate of 20% of taxable value of imported goods and services and deliveries made on the territory of the Republic of Moldova;
- Art.96 (b) sets reduced rates such as 8% for agricultural products, medicines, natural gas and 12% in the HoReCa sector.

It is worth mentioning that throughout the emergency period (set out by the National Extraordinary Public Health Commission through its Decision issued on 13 January 2022), the Tax Service of the RM allowed to use a 6% VAT rate for the HoReCa sector [11].

At the European level, the Directive has fixed a minimum standard rate of 15%, whereas the reduced rates are fixed as a percentage of the taxable amount, which may not be less than 5% [2]. The VAT standard rates applied by 27 EU Member States, as of 1 January 2022, fall within the range of 17-27%, while in 15 Member States out of 27, the VAT standard rate falls within the range of 19% and 21% (Table 1).

Table 1. VAT standard/reduced rates applied by the EU Member States as of 01 January 2022

Member State	Standard Rate	Reduced Rate	Member State	Standard Rate	Reduced Rate
Austria	20	10/13	Ireland	23	9/13.5
Belgium	21	6/12	Italy	22	5/10
Bulgaria	20	9	Lithuania	21	5/9
Cyprus	19	5/9	Luxembourg	17	8
Czech Republic	21	10/15	Latvia	21	12/5
Germany	19	7	Malta	18	5/7
Denmark	25	-	Netherlands	21	9
Estonia	20	9	Poland	23	5/8
Greece	24	6/13	Portugal	23	6/13
Spain	21	10	Romania	19	5/9
Finland	24	10/14	Sweden	25	6/12
France	20	5.5/10	Slovenia	22	5/9.5
Croatia	25	5/13	Slovakia	20	10
Hungary	27	5/18			

Source: Developed by the Author on the basis of the data published by the European Commission [12]

Out of the data displayed in the Table above one can notice that Luxembourg charges the lowest VAT rate, namely 17%. On the other hand, Hungary is the Member State levying the highest VAT rate, i.e. 27%. The experience and example of EU Member States show wide variations of VAT rates from one country to another.

Against this background, multiple issues may arise in the accounting practice in terms of applying VAT in the activity of public-private partnerships implemented in the RM. This may be explained by numerous amendments of the Moldovan Tax Code.

By the end of 2019, the tax legislation of the Republic of Moldova set out in the Tax Code (Art. 101⁴) that partners in public-private partnership projects from the list of works and services of national public interest proposed for public-private partnership that, as of 1 January 2018, made (incurred) capital investments (expenses) intended for the implementation of public-private partnerships, should have the right to claim VAT refund of the amount paid through the bank account to make those capital investments (expenses) [1]. The right to claim VAT refund was granted regardless of the timeframe of commissioning the facilities built with those capital investments (expenses).

Likewise, Art. 103 (9⁸) stipulated that the goods and services imported by the partners under the public-private partnership projects should be subject to VAT exemption with no right to deduction if such goods and services were mentioned in the list of works and services of national public interest proposed for public-private partnerships, approved by the Government pursuant to Art.11 a) of Law No. 179/2008 on Public-Private Partnership, and were intended solely to implement the public-private partnership projects of national interest. The Government was supposed to define the way of using the tax incentives in question [1].

Practically, the provisions of national legislation applicable at that time established incentives (avoid blocking the economic operators' funds in VAT) in order to attract private investors in the projects with the State.

Later on, as of 1 September 2019, the Tax Code of the RM was amended, and Articles 101⁴ and 103 (9⁸) were repealed by Law No. 115 of 15.08.2019 [8].

Therefore, any private partner engaged in public-private partnership projects could no longer enjoy VAT refund on capital investments nor benefit from VAT exemptions without the right to deduction for the imported goods and services. Since that date, general provisions on VAT refund for capital investments as per Art. 101¹ [1] shall apply.

As regards the accounting of VAT, the general chart of accounts used in the Republic of Moldova provides for the following sub-accounts [9]:

2252 “VAT Receivables”

5344 “VAT Liabilities”

Sub-account **2252** is an Asset Sub-account and is used to keep records on VAT receivables. The VAT advance payment shall be mirrored in the Sub-account Debit, as well as the difference between the booked and the calculated amount. The Sub-account Credit shows the amounts booked to extinguish the tax liability, as well as the overpaid amounts or those refunded from the budget.

Sub-account **5344** is a Liability Sub-account and is used to keep records on VAT liabilities to the budget. The Credit part of this Sub-account mirrors the occurrence of or increases in VAT liabilities towards the budget, while the Debit shows the extinction of liabilities or their book-entry.

Hence, in light of accounting records, applying VAT on operations specific for public-private partnership shall be done as follows:

- *Dt 2345 “Receivables related to public-private partnership”*
Ct 5344 “VAT Liabilities” – for the VAT amount recognised as a liability towards the budget;
- *Dt 5344 “VAT Liabilities”*
Ct 241 “Cash”, 242 “Current accounts in national currency” – for the VAT amount to be paid from the budget;
- *Dt 5344 “VAT Liabilities”*
Ct 123 “Fixed assets” – for the VAT amount to be booked, which was paid for the value of the imported fixed asset;
- *Dt 5344 “VAT Liabilities”*
Ct 521 “Current trade liabilities”, 522 “Current liabilities towards the affiliated parties” – for the VAT amount booked upon the purchase of goods (services) from other Moldovan resident undertakings;
- *Dt 2252 “VAT Receivables”*
Ct 5344 “VAT Liabilities” – for the VAT amount related to the difference between the booked and the calculated amounts (the accounting formula is prepared at the end of the reporting period).

CONCLUSIONS

On 1 September 2019, the Tax Code of the RM was amended to repeal Art. 101⁴ and Art. 103 (9⁸) by Law No. 115 of 15.08.2019.

On 24 June 2022 the Republic of Moldova was granted, by the European Commission, the status of an EU candidate country. Therefore, the RM is expected to approximate its relevant legislation with *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*.

The Methodological Guidelines on accounting peculiarities in the process of implementing public-private partnerships shall be amended and tailored in compliance with the new provisions of the Moldovan Tax Code as well as of other legal acts in effect.

Hence, in terms of the above, we consider the range of VAT-related operations, especially when it comes to public-private partnerships, to be rather complex and difficult to overcome, keeping in mind the constantly evolving tax legislation. As the legislative process progresses towards more complex and diversified ranges, imposing new tax regulations in our country, it would trigger the occurrence of new situations concerning the VAT wide spectre of issues, thus offering new research opportunities.

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