

VALUE ADDED TAX (VAT), REGISTRATION AND PRACTICE OF FOOD DONATIONS IN EUROPE

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Abstract. *In recent years, the public and political agendas of many states have raised the issue of the fight against food waste. Starting from concrete data, the number of limited natural resources and population growth worldwide is leading to an increase in the need for food and to feed. The importance of this topic continues to grow and to tighten the world's states at the same table to find solutions to feed the entire population at the level of the world.*

Keywords: value added tax, food donation, state budget

1. Introduction

Value Added Tax (VAT) is an indirect tax borne by the final consumer of the good/service in question. VAT is a cashed tax of each economic agent that participates in the economic cycle of making a product or providing a service that falls within the scope of taxation. After exercising the right to deduct, the taxable economic agents who participated in the economic cycle pay the VAT balance to the state budget. The present study aims to provide an overview of EU legislation that influences food donation as well as EU regulatory barriers.

Studies conducted over the years indicate an increase in food waste, in contradiction with the steady increase in the number of inhabitants the planet that is at the limit of hunger. Rightly the reputable professor, and economist prof. dr. Ion Cucui argues that with the evolution of human civilization, accounting has pursued continuous progress, contributing to the identification of ways to streamline all activities of economic entities [1].

The imminence of a food crisis appears for the first time in the work of Thomas Malthus³, in which it demonstrates the disproportionality between the population growth rate and the food growth rate, which are considered to be limited and not totally renewable. To conclude one third of food produced for human consumption is lost scattered.

Under the conditions of globalization and in the context of the current global economic crisis, accountancy and the accounting profession gain new valences, establishing new responsibilities for professional accountants. The necessary measures are aimed at mitigating the effects of future economic crises and are

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strictly related to the training of specialists in the field and the involvement of the accounting profession [2].

2. Waste food

At present there is no concrete definition of the term of waste of food recognized at U.E. level. Different definitions for this term are used in different states. The waste of food can be defined as the amount of food produced for human consumption that is lost in the way it travels from the place of production to the plate.

The Food and Agriculture Organization of the United Nations (FAO) is a United Nations specialized agency based in Rome whose main purpose is to eliminate hunger on a global scale, improve food, coordinate the activities of governments in the fields of agriculture, forestry and the fisheries industry. FAO also supports countries through research, specialization, development and practical applications, and provides disaster relief. The Food and Agriculture Organization of the United Nations (FAO), has defined the loss of food as "decreases in the quantity or quality of food" [3]

Romania, food waste is defined as "the situation in which food is out of the human consumption chain due to degradation and is disturbed." With the study of food waste, there are other terms that need to be defined in the same context, is also the term food waste. When it comes to food waste, we have to waste the waste.

3. Waste of food and donations in the EU

Framework Directive 2008/98/CE refers to food waste as part of biological waste and defines it as "Food or kitchen waste, restaurants or retail stores, comparable waste from food processing plants." Among other important issues that grind the European Commission, the Action Plan for the Circular Economy, which aims to clarify the legislation and remove all obstacles to these donations, is part of this project.

Among other important issues that grind the European Commission, the Action Plan for the Circular Economy, which aims to clarify the legislation and remove all obstacles to these donations, is part of this project. In this project, it is trying to encourage the food donation in food safety conditions as well as the common interpretation of the European norms, including those relating to VAT.

4. Tax instruments

The two-way relations between fiscal policy and other aspects of the EU's general policy are becoming increasingly apparent as integration is in progress. Currently, there is a considerable body of tax laws in the European Union, and citizens have the possibility to invoke them if community law is violated in a member country.

To reduce food waste, which is faced by a large number of world states, specialists who have studied this issue have proposed and have been legislated a good framework to encourage food donation before the shelf life, as well as simplifying tax deduction donations. Food donation could diminish some of their waste and solve a society's problem - the underprivileged categories. Thus, the authorities have started an active anti-waste campaign globally, a campaign that outlines the issues outlined above, but also a series of tax measures that encourage both individuals and businesses to donate those foods that cannot be marketed. In this study I will present tax treatments that we meet in different countries of the world, focusing on the more detailed comparison of France's cases vis-à-vis Romania, especially from the point of view of applying the accounting system with francophone influences. In the EU, tax instruments successfully used in many Member States are related to VAT and tax deductions (credits) of donated food. Thus, in some EU Member States, the "VAT" debt was abandoned, although this "exemption" is controversial and the compatibility of these policies with the EU VAT Directive is unclear.

5. VAT and food donations in the EU

Under the EU VAT Directives, which states that for food donations the value tax is taxable if the donation of products is made by a taxable person and VAT on the purchase of products is wholly or partly deductible. Exempting VAT payments on food donations are not allowed. The issue of this issue is currently unclear and very difficult because the EU cannot yet impose on Member States the same VAT rates on food as well as the same deduction regime for donations.

Bulgaria – According to the VAT Law [4], no correction of the tax deduction provided for products for which the expiry date or period of validity expires. According to article 28, par. 2 of the Law on Corporate Income Tax, the accounting expense due to lack and expiration of inventories is not recognized for fiscal purposes.

Croatia – In Croatia, VAT on expired goods is only allowed for products purchased at least three months before expiry. The legislation does not contain clear definitions of perishable or damaged products; and does not regulate tax regulations that do not deal separately with retailers.

Czech Republic - The VAT adjustment is imposed in the case of perishables above a certain limit that can be tested by the tax authorities; in the case of damaged products, documentation is required to avoid VAT adjustment; in the specific legislation, there are references to perishable products, including in relation to retail networks;

Belgium - The Belgian decision clarifies the recommendations of the European Commission to set a relatively low or zero level of food value near the best date

before giving up the VAT paid donated products. This clear legal interpretation of the EC Recommendation makes this process easier to use and be more transparent in Belgium.

6. The VAT rate treatment for losses outside EU countries

Looking at the tax legislation of non-EU countries, I noticed that there is no single VAT treatment definition and treatment for the loss of products from deterioration or perisability, expired etc. Therefore, as with EU countries, I will present treatment:

Cyprus: the VAT adjustment is not imposed on perishable products if proof of their destruction is made after the tax authorities have been notified, the tax regulations do not contain explicit definitions for perishable or damaged products although some references may be identified in the legislation; tax regulations also do not deal separately with retailers. In many European countries (for example, Denmark, Estonia, Germany, Malta, Slovakia, Spain, Sweden) there are no explicit specifications regarding the definition of perishable or deteriorated products and the VAT treatment of these categories goods. Starting from the premise that the accounting system in Romania is based on the French one, I tried to deepen in this article a parallel of the two states regarding the fiscal regime of food donation [5].

Romania - By comparison, the legal framework in our country is more restrictive with regard to perishable products, with specific references to the VAT treatment of perishable products (adjustment beyond a certain limit), respectively damaged products (adjustment if the conditions are not met of the objective, distraction and documentary legislation), as well as definitions, descriptions for the two categories of products analyzed.

Donations in our country are legally regulated by the Civil Code [6], which describes the donation as a contract "through which a donor person usually sends a right to ownership of a good to another person, a donor, who accepts it and does not imply the existence of benefits, as a rule and irrevocably." no strict regulation on food donations in current legislation. This, in the case of the donation, the expenses will be considered non-deductible, similar to the mecenate expenses, not being made for the purpose of carrying out the economic activity, but the Fiscal Code [7], profit tax with the cost of food donations. From the point of view of the tax treatment of VAT, [8] "Goods provided free of charge under sponsorship or sponsorship are not considered as deliveries of goods if the total value in any one calendar year falls within the limit of 3 per thousand of the turnover represented by taxable transactions with or without the right to deduct, as well as from operations for which the place of delivery is deemed to be abroad according to the provisions of art. 275, and 278 of the Fiscal Code".

According to Law 32/1994 [9], with subsequent amendments and additions, sponsorship is the legal act by which two persons agree to the transfer of ownership of material goods or financial means to support non-profit-making activities carried out by one of the parties, called the sponsor's beneficiary.

OMFP 1802/2014 provides at point 75:

(1) At the date of entry into the entity, the goods are valued and recorded in the accounting at the entry value, which is established as follows:

- at acquisition cost - for goods purchased for consideration;
- at the production cost - for the goods produced in the entity;
- to the value of the contribution, determined after the valuation - for the goods representing the contribution to social capital;
- at fair value - for goods obtained free of charge or ascertained plus inventory. In the cases referred to in c) and d), the value of the contribution and the fair value respectively are substituted for the acquisition cost.

(2) The fair value of the assets is generally determined by the market records, through an evaluation usually carried out by authorized assessors, according to the law.

In the absence of market fair value data due to the specialized nature of a assets and the reduced frequency of transactions, the fair value can be determined by other methods used, as a rule, by authorized values, according to the law.

Throughout the transport of the goods that are the subject of the donation, the accompanying document is the consignment note, which states the following: "It does not follow the invoice - goods delivered under the donation contract no. ... / ... ". Therefore, there is no tax invoice. The registration in the accounting of the donation consisting in the provision of food products is made by passing their costs to their costs and, at the same time, discharging them from the administration.

Example 1: It offers donations of food worth 10,000 lei. The accounting is done as follows:

$$6582 \text{ "Donations Granted"} = 371 \text{ "Goods"} / \text{Value of Goods Offered} \quad (1)$$

* The value of the donated products is determined according to the above, depending on the provenance. In our case, if the products were purchased, their value is equal to the purchase price on the market, and if they come from their own production, with the sales price.

"In the sponsorship/mecenate actions, VAT payers are entitled to deduct the tax related to the purchased goods and services subject to the sponsorship/mecenate

contracts, with respect to the level and destinations stipulated by the law" [10]. According to the Fiscal Code [9], does not constitute delivery of goods, the provision of goods of small value, free of charge, in the framework of sponsorship, protocol/representation, under the conditions established by the Government Decision no. 1/2016 for the approval of the Methodological Norms for the application of Law no. 227/2015 regarding the Fiscal Code, as subsequently amended and supplemented.

Therefore, VAT on sponsorship goods is not collected as long as the conditions in the rules are met that the granting of goods in sponsorship or mecenate actions is not considered delivery of goods if the total value within a calendar year falls within the limit 3% of turnover. The ceiling taken into account consists of: taxable transactions; exempt transactions with deduction; transactions exempt without deduction; operations for which the place of delivery is deemed to be abroad.

Compliance with this ceiling is determined on the basis of the data reported in the tax returns submitted for a calendar year, without taking into account the sponsorship and the share premium granted. The excess of the maximum threshold is the delivery of the goods for which the VAT is collected, exercised the right to deduct the tax in cash or the goods for which the tax has not been deducted 17 corresponding to the overrun. The excess VAT collected is calculated and included in the adjustment box on the tax return for the last fiscal year of that year.

Example 2: The supermarket made a turnover of 800,000 lei during 2017. In the framework of actions of donations of food whose term of validity is approaching, it granted merchandise of commodities with an acquisition value of 50,000 lei, for which it deducted the VAT upon purchase.

Because at the end of 2017, the company registered the turnover of 800,000 lei, from the point of view of VAT, the company could offer in the form of sponsorship goods worth 24,000 lei (3‰ of the turnover), which were not considered delivery of goods, so it was not necessary to collect of their value.

However, as the company offered goods worth 50,000 lei, the difference of 26,000 lei (the amount with which the limit of 3‰ was exceeded), it must recognize the VAT collected in the amount of 4,940 lei. The value added tax for the value of 26,000 lei, representing the overrun of the ceiling, is recorded in the accounting as follows:

635	=	4427	4.940 RON
"Expenses with other taxes, and taxes assimilated payments"		"VAT collected"	

The amount of RON 4,940 registered in the 635 account due to the VAT admission collected is not deductible in the calculation of the corporate income tax.

France –And this state talked a lot about food waste, but especially because supermarkets were simply throwing food into the garbage, strop in them with different chemicals, so they could not be recovered. The French government, in 2012, launches among other long-term goals and a 50% reduction in food waste by 2025. Thus, the French authorities decide through the 2016 Food Waste Act that supermarkets will donate perishable or perishable products. The law has forced retailers to optimize their marketing strategies. Many of them have improved their logistics processes to calculate stocks as accurately as possible.

The tax treatment of donations is found in the General Tax Code (CGI), treatment on three levels: French, international and community. The French level is the simplest and perhaps evens the least unpredictable at the legal and fiscal level. It refers to the strictly internal level, namely to a French-French framework which is subject to French law and can benefit from the tax advantages provided for by the French tax legislation, namely the reduction of taxes on donations for works of general interest. French taxation provides three tax cuts, the scope and conditions of which differ from one another. For CGI article 200, for tax cuts of individuals it is applied if a natural person makes a donation to the benefit of a philanthropic organization of general interest, this donation gives the donor the right to a reduction in income tax equal to 66% the amount donated, up to 20% of its taxable income.

Here we find the concept of an organization of general interest well defined, being the organization whose management is dishonored, not engaged in a lucrative activity and does not operate for the benefit of a circle of people. In the case of legal persons, the tax reduction is regulated in Article 238a of the CGI, which states that if the donation is to the benefit of a foundation recognized as being of public utility, this donation allows the company to apply a tax reduction of the corporate tax equal to 60% of the amount granted, up to a limit of 0.5% of the turnover free of charge to the donor. If the company ensures the delivery and storage of the food, the products subject to the donation, the costs related to delivery and storage are considered as a donation, being regulated in the same article.

In August 2016, the Ministry of Economy and Finance comes back with legislative amendments on food donations, modifying the rules on deductibility of donations. Thus, short-term preservation (DLC) foodstuffs, the value used to calculate the tax reduction is equal to part of the price or cost of the asset if it is donated before the last three days of the DLC. Tax treatment of VAT is regulated at European level by Council Directive 2006/112/EC on the Common System of

VAT, the Directive specifies that food donations may be imposed if they are made by taxable persons and VAT on the purchase of goods are totally or partially deductible. The European Commission recommends when donation takes place while the recommended consumption date is near or the goods cannot be sold due to their appearance, that the value on which the VAT is calculated is low enough or close to zero. The main obstacles: the imposition of VAT on food donations is, in some Member States, still a difficult issue; the terminology of legal texts varies so much that value can be considered as low or zero at the time of donation and that VAT may be subject to "abandonment" or "exemption."

Conclusions

In Romania, the issue of tax treatment of food donations seems at first sight to be a "financial utopia." In a fierce fight for the collection of taxes and taxes to the state budget, balancing the state budget, food donations is perceived as a fad of some states with a high-performance economy. Paradoxical, although we are among the last EU states in terms of waste control measures, our country is among the first places on poverty. The existence of a legal, clear and concise framework that favors food donations can solve some of the social problems.

REFERENCES

- [1] I. Cucui, *The Costs and Their Importance in Controlling the Company's Management*, (Arves Publishing House, Craiova, 2008).
- [2] I. Cucui, R.M. Marin (2018), *Annals of the Academy of Romanian Scientists, New Series on Economy, Law and Sociology*, **4**(1), 13 (2018).
- [3] <https://eur-lex.europa.eu/>
- [4] The VAT Law, published in: "OFFICIAL MONITOR" no. 260 of 23 March 2018 (Article 80, paragraph 2, point 5).
- [5] Law no. 571/2003 on the Fiscal Code
- [6] Civil Code, http://www.monitoruloficial.ro/magazin/product--CODUL_CIVIL_edi%C5%A3ia_a_IV-a--6641.html, ISBN 978-973-567-766-4, 130x200 mm, 672 pages
- [7] Fiscal Art Article 25 paragraph (4) https://www.anaf.ro/anaf/internet/ANAF/asistent_a_contribuabili/persoane_fizice/legislatie/codul_fiscal/
- [8] According to the provisions of Article 270 (8) (c) of the Fiscal Code <https://codfiscal.net/40542/legea-321994-privind-sponsorizarea-actualizata>
- [9] <http://www.ceccarbusinessmagazine.ro/tratamentul-operatiunilor-de-sponsorizare-si-mecenat-a2238/>
- [10] Law 32/1994, art. 270 alin. (8) lit. c), https://www.anaf.ro/anaf/internet/ANAF/asistent_a_contribuabili/persoane_fizice/legislatie/codul_fiscal/