

National and International Fiscal Regulations on Value Added Tax - Part II -

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Abstract

This paper aims to analyze national and international tax regulation on VAT. The reason why we chose this topic is the fact that in recent years the legislative changes on VAT have seen numerous updates on the Romanian economic market, which leads us to think that there are fluctuations in the activity of a company, both from an economic and an operational perspective.

Taking into account the economic potential of our country, which is not very well exploited, we believe that this paper can bring into discussion a challenging topic. The main purpose is to analyze and reflect the impact of the change in VAT legislation on the business environment, as well as on the final consumer.

Key terms: value added tax, VAT code, VAT rates, taxpayers, Fiscal Code, taxable transactions, simplification measures, VAT cash accounting system, e-invoicing, blockchain, cryptocurrency

JEL Classification: K34, H87

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5. Simplification measures

In order to be able to apply simplification measures, the following conditions must be met: both economic partners must be registered for VAT purposes.

The simplification measures have been implemented in order to avoid and eliminate the registration of economic operators for VAT purposes in several Member States. Thus, simplification measures may be applied in the case of transfers of goods, acquisitions from within the European Union or even multi-stakeholder operations without the need for economic operators to register for VAT purposes in the Member States.

However, in the case of multiparty operations, economic operators are not obliged to apply **simplification measures**, which is optional, according to the Order of the Minister of Public Finance No. 3417/2009 for the approval of the Instructions for the application of simplification measures in the field of value added tax on multiparty operations in the Community, related to work on tangible movable property, and the Instructions for the application of simplification measures in the field of value added tax the returns of goods in the community space and the fiscal treatment of the repairs performed during the warranty and post-warranty period. It is also optional to apply simplification measures for economic operators whose object of activity is to carry out operations with goods that are sold on consignment, in the case of stocks that are available to the customer, or that have been sent to be tested and verified.

The following table sets out the Member States that may opt for simplification measures in the case of stocks that are made available to the customer.

Table 8. Simplification measures for stocks made available to the customer

No.	Country	Simplification measures for stocks made available to the customer	No.	Country	Simplification measures for stocks made available to the customer
1	Austria	Yes	15	Latvia	Yes
2	Belgium	Yes	16	Lithuania	Yes
3	Bulgaria	No	17	Luxembourg	No
4	Cyprus	Yes	18	Malta	No
5	Czech Republic	Yes	19	Netherlands	Yes
6	Denmark	No	20	Poland	Yes
7	Estonia	No	21	Portugal	No
8	Finland	Yes	22	Romania	Yes
9	France	Yes	23	Slovakia	Yes
10	Germany	No	24	Slovenia	Yes
11	Greece	No	25	Spain	No
12	Hungary	Yes	26	Sweden	No
13	Ireland	Yes	27	Great Britain	Yes
14	Italy	Yes			

Source: Author's contribution.

According to Article 331 of Law No. 227/2015 on the Fiscal Code, as subsequently amended and supplemented, the list of operations that may be chosen for the application of simplification measures includes deliveries of waste (ferrous and non-ferrous), residues and other recyclable materials, wood as well as wood materials.

The same category, for which the simplification measures can be applied, can include the deliveries (with invoiced values, excluding VAT, that exceed or are equal to 22,500 lei) of mobile phones, of devices that have an integrated circuit or even game console deliveries.

The rules on the application of the Fiscal Code have established that the application of the reverse charge regime is a method of simplifying the tax payment. There are situations when economic operators do not comply with the legal provisions for the application of simplification measures, for instance situations in which the word *reverse charge* is omitted from the issued invoices. In these cases, taxpayers lose the right to deduct the VAT charged for the purchase made.

By introducing these simplification measures, carousel fraud, fictitious export and even tax evasion can be reduced. These frauds amount to illegal VAT refunds to phantom companies, as they are only possible in this situation and not for the entire VAT application basis.

6. Cancellation of VAT code and recovering it

In practice, there are situations when taxpayers may risk the cancellation of the VAT code, ex officio, by the tax authorities, and the process of regaining it is not very easy (Motrea & Cernușca, 2017).

Article 316 Paragraph (11) of the Fiscal Code presents the situations in which the fiscal bodies may resort to the cancellation of the VAT code, followed by Paragraph (12) which presents the cases in which the taxpayers can regain their VAT code.

Among the conditions specified in the Fiscal Code regarding the loss of registration for VAT purposes are the following:

- non-submission of any VAT statement for a period of 6 consecutive months;

- the expiry of the company's life;
- expiry of the period of retention of the registered office;
- crimes of the company's administrators or associates are registered in their fiscal record;
- evasion of controls performed by the tax authorities;
- lack of statutory bodies.

In addition to the situations provided above, the taxpayer may also lose his VAT code in the following cases:

Table 9. Loss and recovery of VAT code

Situation in which the VAT code is cancelled	How to recover the VAT code
Crimes of the company's administrators or associates are registered in their fiscal record	<ul style="list-style-type: none"> • By ending the situation that led to the cancellation of the code.
Non-submission of any VAT statement for a period of one semester/2 quarters in the case of quarterly taxpayers	<ul style="list-style-type: none"> • By meeting declaratory obligations • By providing the non-submitted VAT statements to tax authorities • By drawing up a reasoned application, stating the commitment to submit the declarations within the prescribed time limits.
Submission of VAT statements with null value for a period of one semester/2 quarters in the case of quarterly taxpayers	<ul style="list-style-type: none"> • By submitting a declaration stating that economic activities will take place.
A taxpayer's request for removal from the register of taxable persons registered for VAT purposes.	
There is no obligation to register for VAT purposes.	

Source: Fiscal Code.

At the same time, by the Government Emergency Ordinance No. 84/2016 amending and completing some normative acts in the financial-fiscal field, the cancellation of the VAT code in case of a taxpayer's temporary inactivity has been eliminated. The following diagram shows the effects of canceling the VAT code:

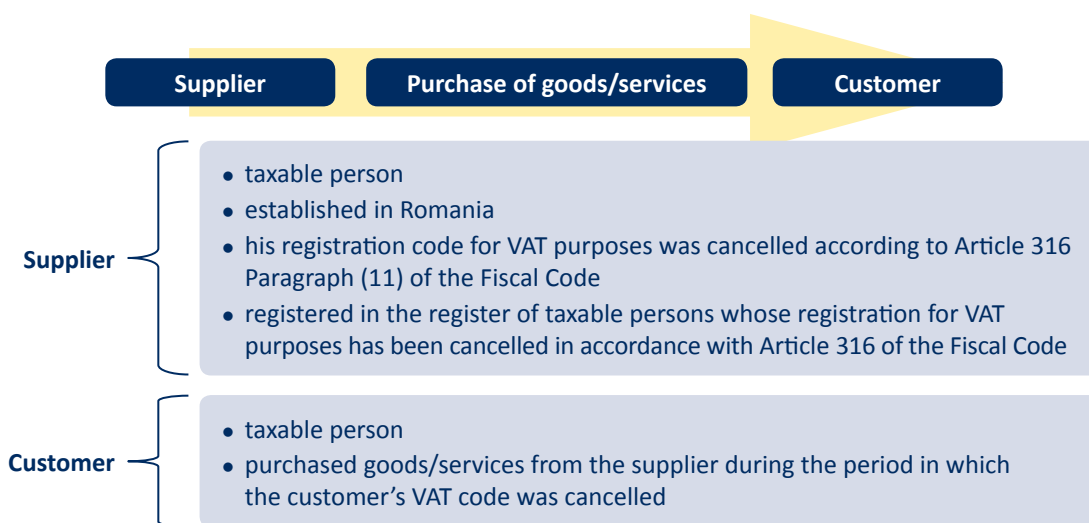


Figure 4. The effects of canceling the VAT code

Source: Fiscal Code.

Supplier	Customer
During the period in which his VAT code is cancelled he does not benefit from the right to deduct the tax related to the acquisitions made. He is obliged to collect the VAT related to the taxable operations carried out during the period in which the VAT code has been canceled and to pay it to the state budget.	Does not benefit from the right to deduct the VAT related to the respective acquisitions. Exception: benefits from the right to deduct VAT related to the acquisitions of goods made within the foreclosure procedure or acquisitions of goods from taxable persons in bankruptcy procedures

Source: Fiscal Code.

There are taxpayers who consider that not being registered for VAT purposes is much more advantageous, for which reason Article 316 Paragraph (11) g) of the Fiscal Code gives them the option to withdraw from the register of taxable persons paying VAT, the effects of code cancellation being the following:

- after the cancellation of the registration code for VAT purposes there is no obligation to collect the tax related to the delivered goods or services provided;
- there is an obligation to adjust the deductible VAT related to unused goods and services purchased.

The effects of regaining the registration code for VAT purposes are provided in Article 11 Paragraph (8) and (9) of the Fiscal Code and are presented schematically below:

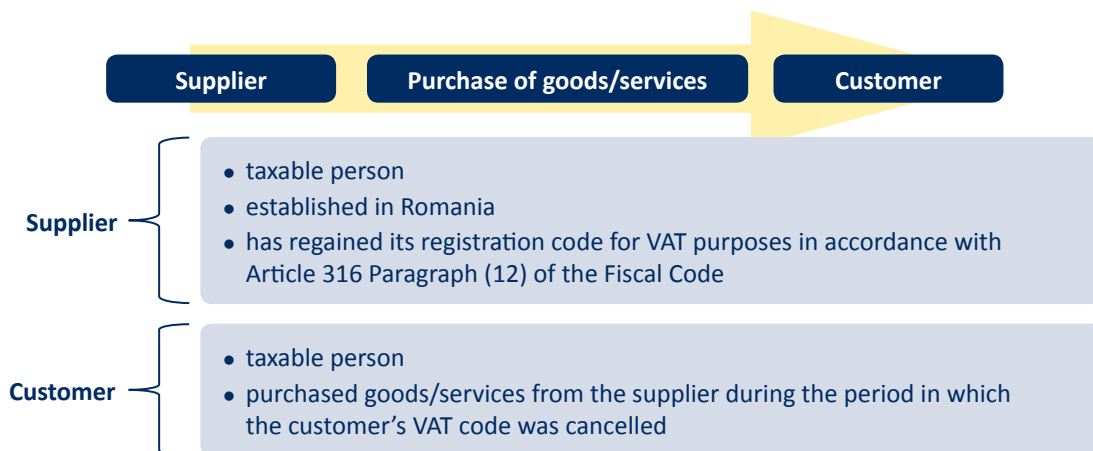


Figure 5. The effects of regaining the registration code for VAT purposes

Source: Fiscal Code.

Supplier	Customer
Exercises his right to deduct VAT for purchases of goods and/or services made during the period in which he had the registration code for VAT purposes canceled, by entering in the first VAT statement filed after registration or, as the case may be, in a subsequent statement, even if the invoice does not include the registration code for VAT purposes of the taxable person.	Exercises the right to deduct the tax for the acquisition of goods or services during the period in which the supplier/provider's registration code for VAT purposes was canceled. The exercise of the right to deduct VAT for the respective acquisitions is made on the basis of invoices issued by the supplier/provider, by entering in the first VAT statement provided in Article 323 of the same normative act submitted after registration of the supplier/provider, as the case may be, in a subsequent statement.

Supplier	Customer
For deliveries of goods/services made during the period in which he had the registration code for VAT purposes canceled, he issues invoices in which he separately records the VAT collected in that period, which is not recorded in the VAT statement submitted according to Article 323 of the Fiscal Code.	

Source: Fiscal Code.

The VAT adjustment can be made under the following conditions:

Situations	Adjustments
Cancellation of the VAT code according to Article 316 Paragraph (11) a)-e) and h) of the Fiscal Code	No tax adjustments are made for unused services and non-capital goods.
Cancellation of the VAT code on request	There is an obligation to adjust the tax deducted for capital goods, fixed assets, inventory items and purchased goods, existing in the balance/stock at the date of cancellation of the registration code for VAT purposes, as well as for unused services.

Source: Fiscal Code.

7. VAT in the Digital Age

On 6 December 2019 an event on VAT in the Digital Age was organized by DG TAXUD (The European Commission's Directorate-General for Taxation and Customs Union) in Brussels, Belgium. Stakeholders working in this field of VAT have been brought together to reflect on the possibilities and challenges posed by new technologies in the area of value added tax. The participants discussed the potential to use some advanced technologies like blockchain in the VAT area.

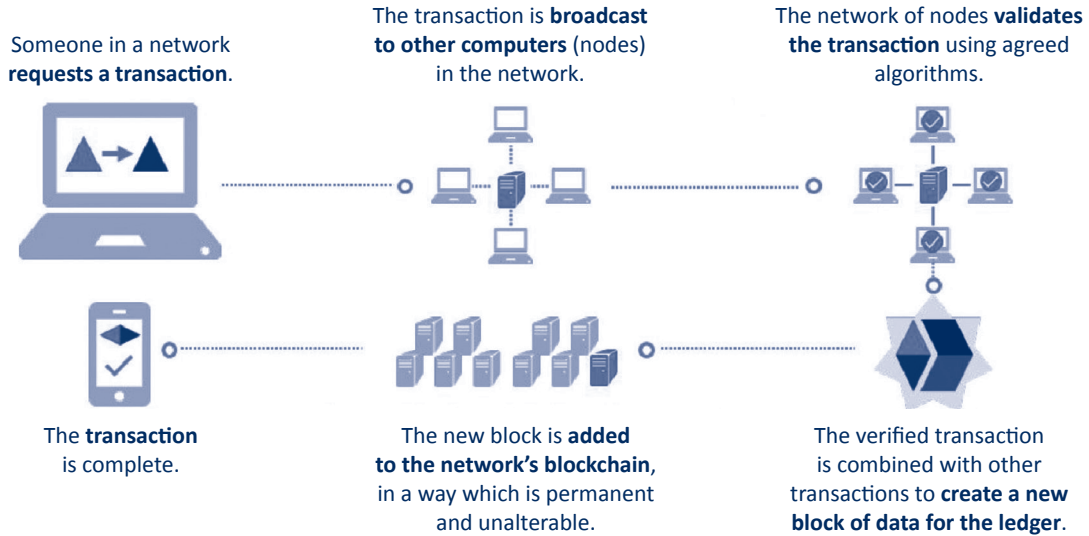
The main topics of discussion at this event were:

- taxation and technology, setting the scene;
- developing a risk analysis capacity at the European Union level;
- VAT and blockchain: the impact of blockchain on VAT legislation;
- a widespread risk analysis at the European Union level – to see beyond borders;
- no revolution of value added tax but smart technological evolution;
- VAT in the digital age: the business perspective;
- VAT and blockchain;
- VAT in the digital age: e-invoicing in Italy;
- digitalizing VAT – Estonia;
- VAT in the digital age. VAT reporting and digitalization.

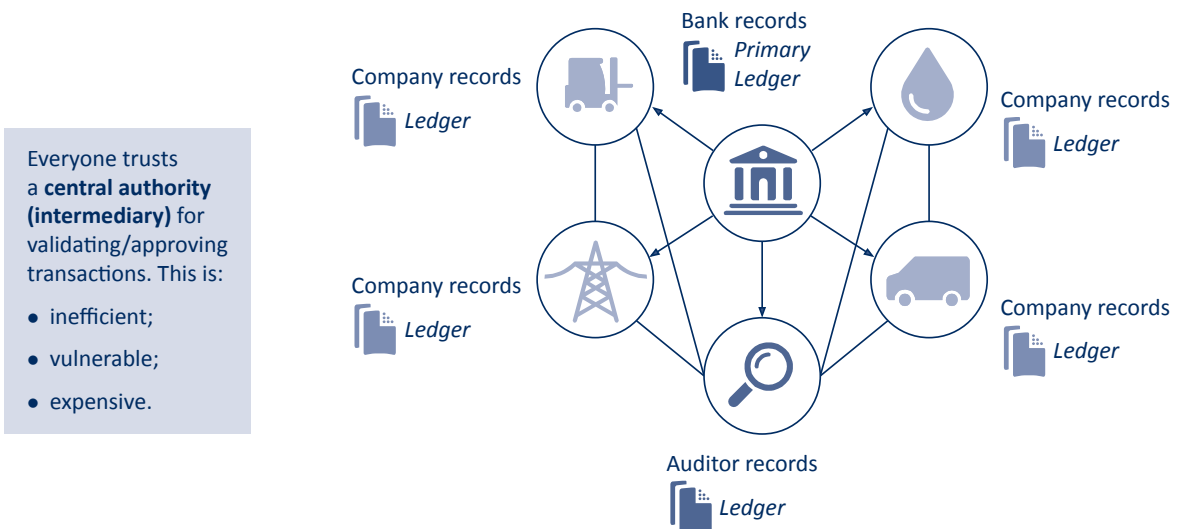
A standard definition describes blockchain as distributed and decentralized ledger in which transactions are made using cryptocurrencies will be recorded chronologically and publicly.

A better definition from the accounting field is describing blockchain as an internet-based technology which gives accounting records and transactions to be made more securely and more efficiently.

How does blockchain work?



Today: Information exchange with separate ledgers



Source: [https://events.pwc.com/uk/eventsmss/v2-1/eventsol2.nsf/lkp_ImageById/UKWE-AXXK8D/\\$file/VAT%20and%20Blockchain%20April%202018.pdf](https://events.pwc.com/uk/eventsmss/v2-1/eventsol2.nsf/lkp_ImageById/UKWE-AXXK8D/$file/VAT%20and%20Blockchain%20April%202018.pdf)

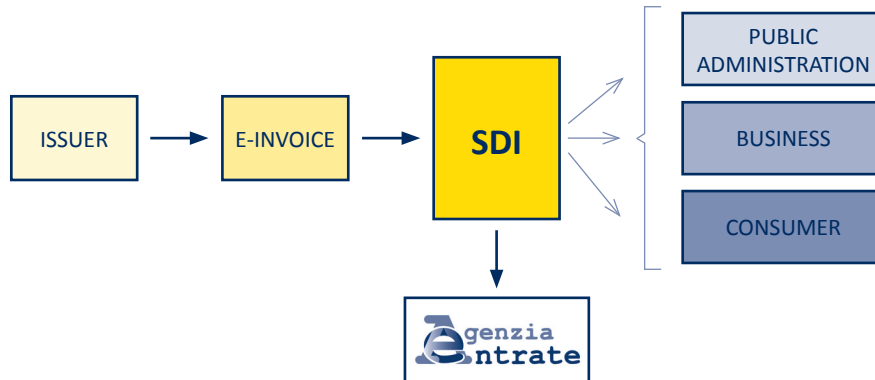
Value added tax remains a transactional tax: blockchain just changes the platform of exchange. Tax authorities accept payment of VAT only in domestic currency; thus, they want the domestic value of the VAT charged at the moment of transaction. Cryptocurrency has to be exchanged into domestic currency, but the value of cryptocurrency can be volatile.

For this subject, VAT in the Digital Age, we will present the system applied by **Italy** in connection with **E-Invoicing**. The Italian tax authorities provided many clarifications regarding various matters related to e-invoicing rules which have become mandatory from 1 January 2019 for all invoices issued.

Invoices dated from 1 January 2019 and issued in paper format aren't valid for VAT purposes and have to be treated as not issued. In order to recuperate the related input VAT, the customers should request the

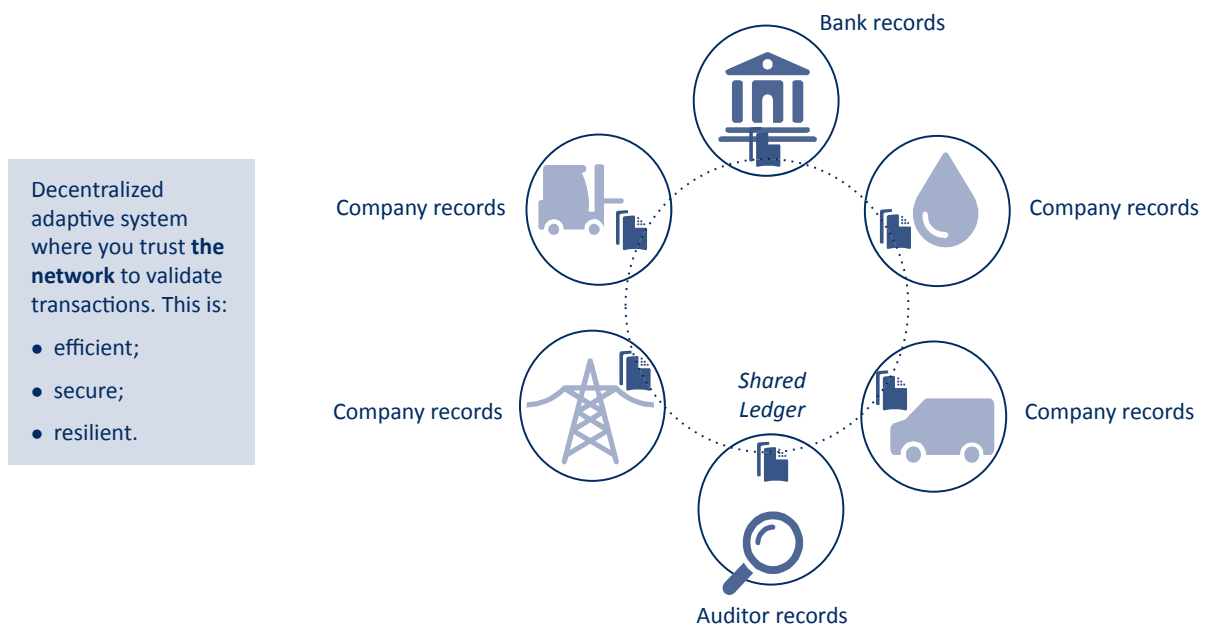
supplier to issue a compliant e-invoice through the SDI (Sistema di Interscambio). The SDI is a platform through which invoices can be validated and sent to their clients. The system is managed by a public organization in charge with company tax compliance. If the vendor doesn't issue the e-invoice through the SDI, the customer should issue an electronic self-invoice through the SDI. Debit and credit notes dated 2019 and which are related to invoices issued on paper format in 2018 have been issued in an electronic format through the SDI.

E-INVOICING



Source: Ministero dell'Economia e delle Finanze (2019), *VAT in the Digital Age*, Brussels.

Tomorrow: Information exchange with shared ledgers



Source: [https://events.pwc.com/uk/eventsmss/v2-1/eventsol2.nsf/lkp_ImageById/UKWE-AXXK8D/\\$file/VAT%20and%20Blockchain%20April%202018.pdf](https://events.pwc.com/uk/eventsmss/v2-1/eventsol2.nsf/lkp_ImageById/UKWE-AXXK8D/$file/VAT%20and%20Blockchain%20April%202018.pdf)

■ Supplies to non-established clients

E-invoicing rules don't apply to non-residents. Nevertheless, Italian vendors can choose to transmit e-invoices through the SDI to non-resident clients, or to report the data to the Italian tax authorities through

the monthly cross-border transactions report. The Italian suppliers should send e-invoices through the SDI to the non-resident clients, and should also provide their non-resident clients with a paper copy of the e-invoice, stating that it is a paper copy of an e-invoice sent through the SDI.

■ Acquisitions from non-established vendors

Italian clients can opt either to file the monthly cross-border trading report or to issue an electronic self-invoice via the SDI in order to declare:

- intra-EU acquisitions of goods;
- acquisitions of common services from non-Italian suppliers (both EU and non-EU).

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