

THE EFFECTS OF V.A.T. SPLIT PAYMENTS MEASURE ON INSOLVENT AGRICULTURAL COMPANIES

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Abstract

In Romania, the value of added tax (VAT) is the most important source of revenue for the general consolidated budget (24.4% in 2015 and 23.1% in 2016), but the degree of compliance is around 80% VAT paid on time in relation to the VAT declared in VAT returns submitted by taxable persons registered for VAT purposes. The paper presents the impact of the measure split VAT payment on insolvent agricultural companies, as it has the role of increasing the voluntary compliance rate of companies in insolvency, reducing VAT evasion, ensuring a fair competitive environment by eliminating the advantages of some economic operators with incorrect fiscal behaviour that does not pay VAT to the state budget. The conclusions drawn from the study revealed that the split VAT measure would reduce the chances of recovery for insolvent agricultural companies, contradicts the payment schedule and the prioritization for the distribution to creditors and contravenes the objective for which insolvency proceedings were regulated.

Key words: VAT split payments, agriculture, insolvent companies

INTRODUCTION

The Government Ordinance no. 23/2017 on VAT split payments, published in the Official Gazette, 1st part from 31st august 2017, is the legislation that presents the implementation ways of the new VAT collecting mechanism. [1]

The VAT is the state's budget most important source of income (it is an indirect tax, collected by the companies which are VAT payers on behalf of the State), even if the collection rate is about 80% between the VAT paid at the due date and the VAT declared in VAT return by Romanian companies. [6]

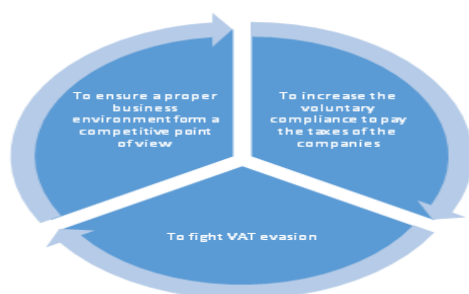


Fig.1. The main reasons of application of the VAT split measure

Source: Own representation.

This method of paying the VAT became optional at 1st of October 2017, becoming mandatory for all the companies at 1st of January 2018. Law no, 275/2017 on the application of VAT split payment, came into force at 31st of December 2017, applicable from 1st of January 2018 through which the application of this mechanism became significant. [2] Thus, the VAT split payment is mandatory only for State companies and private companies in insolvency or companies that have debts in VAT payments, for all the other types, this mechanism is optional. The companies in insolvency at 431st of December 2017, will apply the mechanism by 1st of March 2018. The societies that are not VAT payers, will not make two payments when buying from companies that apply the split VAT system. Thus, the companies that are not VAT payers and the authorized persons, will not make two payments when having relationships with companies that apply the split VAT system. So, the obligation of paying the VAT in a VAT special account of the provider which applies the split VAT

mechanism, will come only to the companies that are VAT payers. [4]

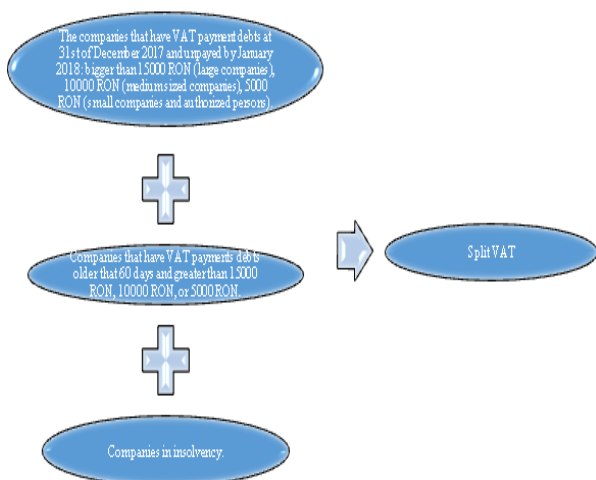


Fig.2. The application of VAT split payments
Source: Our representation.

MATERIALS AND METHODS

Based on The national office of the Register of Commerce’s statistics, it was analysed in comparison, the dynamics and the evolution of the registered, active, dissolved in insolvency, radiated and with suspended activity companies, existing in January 2018 and January 2017. It was analysed, also, the impact of the VAT split payments on the agricultural societies in insolvency.

RESULTS AND DISCUSSIONS

The split VAT concept is based on the paying the VAT in/from a special VAT account, which will have the sequence “VAT” in the IBAN. [7]

It will not affect any other rule in the VAT system (the chargeability rules, the way of recording the transactions in the VAT return, time period of issuing the invoices, paying the VAT, without any other additional reporting obligations).

The mechanism works the following way: each VAT payer will have a special VAT bank account, different from the current bank account, and for every invoice received from the providers that are VAT payers, the beneficiary will make two payments: one in the current bank account (the value of the

products/services that they bought – the VAT tax base) and the other payment will be made from the VAT bank account and it will represent the VAT value of the beneficiary. Exceptions will be made for the cash payments.

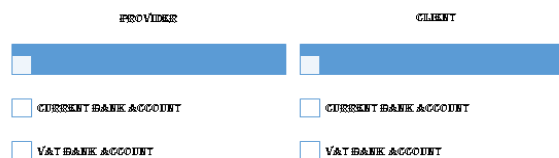


Fig 3. Payments by bank transfer: both the provider and the client are VAT payers
Source: Our representation.

The authorized persons, individual companies, family businesses and the legal persons (societies, national companies, autonomous companies, economic interest groups, cooperative societies, cooperative organizations, European societies, European cooperative societies and European interest groups headquartered in Romania), but also any other natural or legal person are obliged by law to be recorded at the national office of the Register of Commerce, obtaining an registration certificate in which are mentioned the serial number and an unique registration code assigned by the Ministry of Public Finance. It will be presented the registered companies after 1989. [8]

Table 1. The number and the structure of the companies registered at the Register of Commerce, in December 1990 – January 2018

Period (year, month)	Number of registrations	(%)
Total at 31st January 2018, from which:	2,937,258	100.0
1990-2003	1,119,100	38.10
2004	144,284	4.91
2005	159,464	5.43
2006	135,371	4.61
2007	144,728	4.93
2008	144,177	4.91
2009	116,024	3.95
2010	123,148	4.19
2011	133,190	4.53
2012	125,603	4.28
2013	124,816	4.25
2014	101,627	3.46
2015	113,167	3.85
2016	105,982	3.61
2017	136,699	4.65
2018, January	9,878	0.34

Source: www. onrc.ro Operations in the Central Register of Commerce - Statistical summary of data from the Central Trade Register - on January 31, 2018, no. 315 [8]

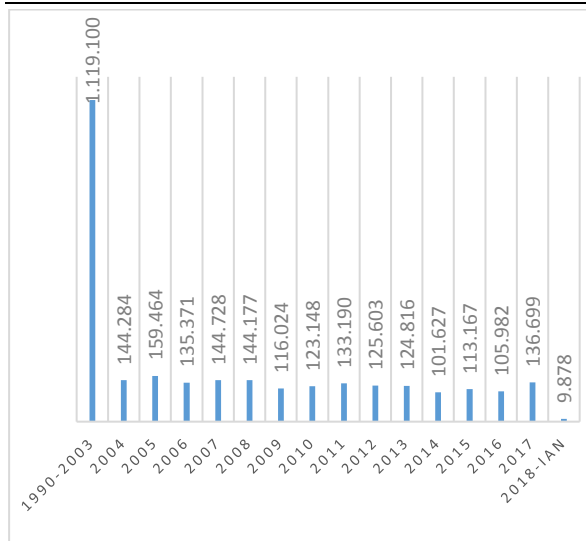


Fig. 4. The situation of registration in Romania in December 1990 – January 2018
Source: Own design.

So, it can be observed, that from a total of 2,937,258 registered companies, 38.10% of the registrations took place in 1990-2003, but in 2004-2018, the annual percentage of registrations was between 3.6% - 5.5%, with a top of registrations in 2005, when it was registered a number of 159,464 new companies.

Talking about January 2018, it can be seen that there were 9878 registered companies, compared to 5,475 of the same period of 2017, with a growth of 44.57%.

Table 2. Comparison of registrations by company type in January 2018 versus January 2017

	Total	CA	IF	II	PFA	SA	SRL
2018	9,878	6	115	1,191	2,209	8	6,349
2017	5,475	2	27	482	1,038	11	1

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

The most companies set up in 2018 were the limited liability ones, with a growth of 38.35%, compared to the same period of 2017, the authorized persons which almost doubled their number, the individual companies had grown their number with 72.52%.

From these registrations, in January 2018, 1,342 chose a CAEN code from agriculture, forestry and fishing, which represents a number 3.85 times bigger compared to January 2017. [5]

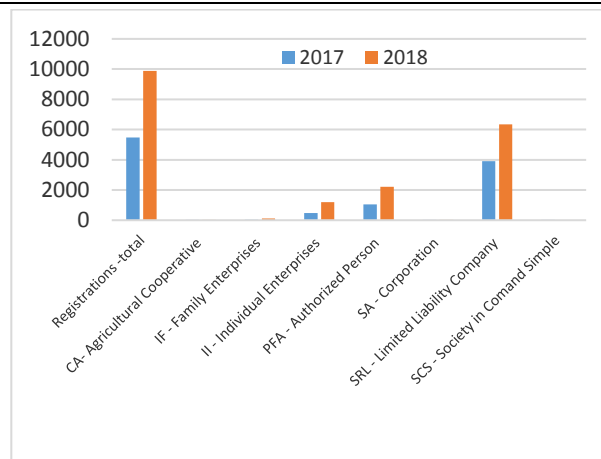


Fig 5. The types and the number of registered companies at the Register of Commerce: January 2018 – January 2017

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

Table 3. Number of registered companies at the Register of Commerce in agriculture, forestry and fishing: January 2018 – January 2017

Registrations	Number of registrations - January -		2018/2017 %
	2018	2017	
Total, from which:	9,878	5,475	80.42%
Agriculture, forestry and fishing	1,342	348	385.63%

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

The number of active professionals, legally speaking, registered in January 2018 was 1,259,186, with a growth of 5.61% compared to January 2017. The number of active legal persons has grown with 1.13%.

Table 4. The number of active professionals: January 2018 – January 2017

Number active professionals – January -						2018/2017 %
2018			2017			
Total, from which:	Authorized persons	Legal persons	Total, from which:	Authorized persons	Legal persons	
1,259,186	386,110	873,076	1,192,329	381,776	810,553	5.61

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

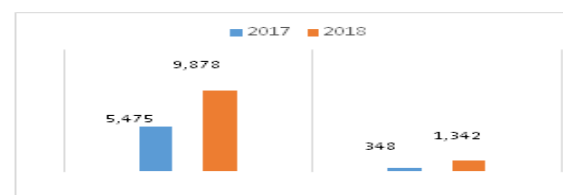


Fig 6. Registrations and active professionals: January 2018 – January 2017

Source: www. onrc.ro – statistics, Accessed January 10, 2018.

The method of liquidation and winding-up of a company, is established by the article of association, doesn't matter the type of the company. According to the law, the liquidation must be made no later than the date the company was registered at the Register of Commerce with the mention of the winding-up.

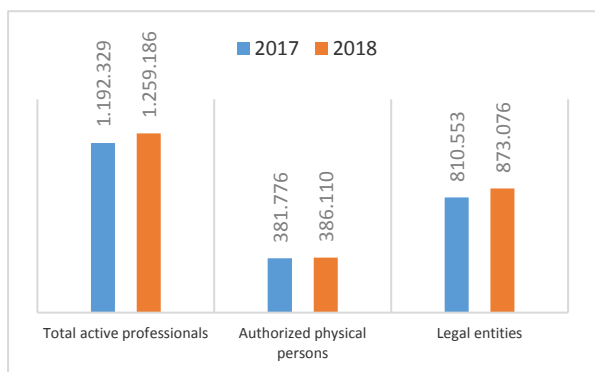


Fig. 7. Active Professionals: January 2018 – January 2017

Source: www. onrc.ro – statistics, Accessed January 10, 2018.

The liquidator must submit to the office of the Register of Commerce, for the indication in the Register of Commerce, a report on the economic situation of the company. Depending on this report, whether the debtor fulfils the terms for opening the simplified insolvency proceedings, the liquidator has the obligation to request the opening of this procedure within 15 days form the report's submission date. [3]

Table 5. Liquidation.Comparison January 2018 – January 2017

Liquidation	Number of liquidations – January -		2018/2017 %
	2018	2017	
Total, of which:	3,089	1,276	142.08%
Agriculture, forestry and fishing	110	40	175%

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

After the liquidation is done, the liquidators shall be submitted to the Register of Commerce Application for cancellation of the registration of the company from the Register of Commerce, on the basis of the final report of winding-up proceedings and the preparation of the financial statements of

winding-up proceedings which shows the heritage situation of claims and the allocation of remaining assets.

Table 6. Insolvency. Comparison January 2018 – January 2017

Insolvency	Number of liquidations – January -		2018/2017 %
	2018	2017	
Total, from which	753	512	47.07%
Agriculture, forestry and fishing	25	25	0%

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

The resolution by which the company has cancellation from the Register of Commerce, shall be published on the web site of the National Office of the Register of Commerce.

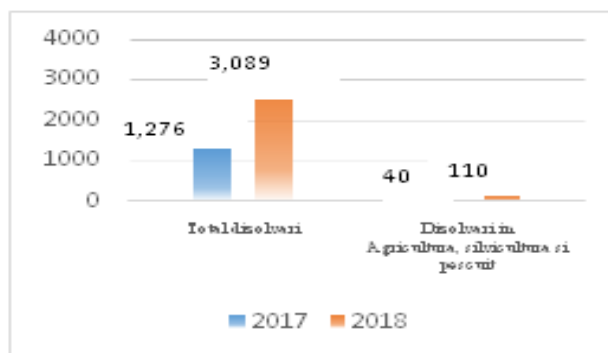


Fig. 8. Liquidations companies: January 2018-January 2017

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

Thus, according to ONRC, in January 2018, there were dissolved 3,089 companies, from which, 110 with a CAEN code from agriculture, forestry and fishing.

Comparing to 2017, the number of this type of companies, had grown with 142.08% overall, and with 175% in agriculture, forestry and fishing.

753 companies have declared their insolvency, with an increase of 47.07%, compared to the same period of the previous year. These companies will apply the split VAT system. [5]

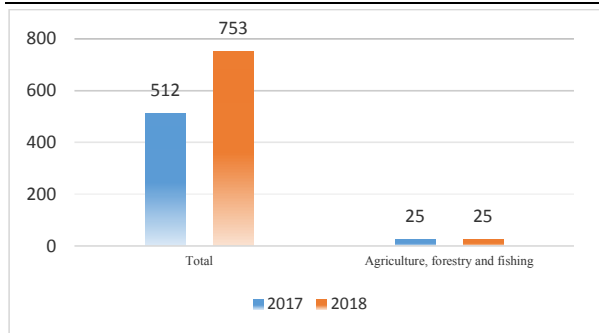


Fig. 9. Insolvent companies: January 2018-January 2017, source: www. onrc.ro – Statistics, Accessed January 10, 2018.

Table 7. Cancelled companies January 2018 – January 2017

Cancelled	No. of cancelled companies -January-		2018/2017 %
	2018	2017	
Total cancelled from which	8,072	5,640	43.12%
Agriculture, forestry and fishing	914	521	75.43%

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

In January 2018, compared with the same period of the previous year, the total of cancelled companies was with 43.12% bigger and in the agricultural companies, it was a raise of 75.43%. [5]

Table 8. Suspended companies January 2018 – January 2017

Suspended	No. of cancelled companies -January-		2018/2017 %
	2018	2017	
Total Suspended, of which	2,472	1,061	132.99%
Agriculture, forestry and fishing	113	52	117.31%

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

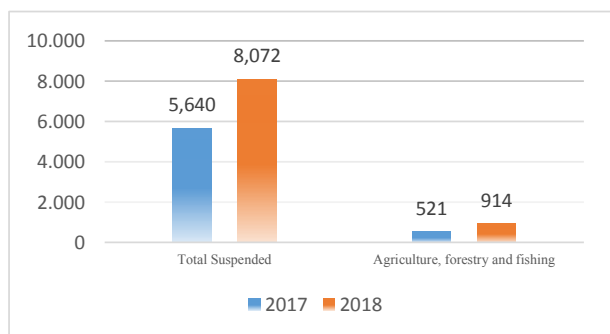


Fig. 10. Cancelled companies companies in January 2018 – January 2017, Source: www. onrc.ro – Statistici, Accessed January 10, 2018.

Speaking about suspended activity, in January 2018, compared with January 2017, there was a growth of 132.99%. The ascending trend, was registered in the area of the companies from agriculture, forestry and fishing, where there was a percentage of 117.31%.

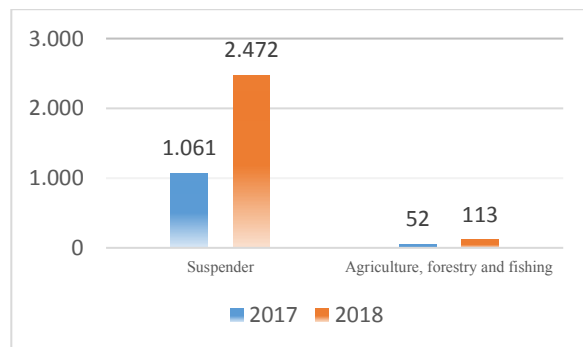


Fig 11. Suspended companies in January 2018 – January 2017

Source: www. onrc.ro – Statistics, Accessed January 10, 2018.

CONCLUSIONS

Following the analysis, there was found that: The arguments of the introduction of the VAT split payments: the increase of the degree of the compliance on a voluntary basis to the payment of the companies in insolvency proceedings, the reduction of tax evasion, ensuring a fair competitive environment by eliminating the advantages of the companies that are not paying the VAT to tee state’s budget.

-The companies registered in January 2018, had a grow of 44.57% compared to the same period of the previous year. The registrations in Agriculture, forestry and fishing, had grown 3.85 times, compared to January 2017, but also the number of cancelled and suspended companies had an important rise.

-The number of juridical active professionals registered in January 2018, has increased with 5.61% compared to January 2017.

-The number of cancelled companies had increased with 43.12% in January 2018 compared to 2017, and in agricultural companies, there were with 75.43 % more.

-The number of the companies with suspended activity, had increased in January 2018 compared to January 2017 with 132.99%, and in the companies from the field

of agriculture, forestry and fishing, the percentage was of 117.31%.

-The number of cancelled companies increased with 142.08% in January 2018, and in the agricultural ones, with 175%, compared with 2017.

-The number of societies that declared their insolvency, in January 2018, compared to 2017, had grown with 47.07%.

-The split VAT mechanism will lead to a decrease of the recovery chances of the companies in insolvency proceedings, including ones with a CAEN code form agriculture, forestry and fishing.

-The implementation of the split VAT payments, contradicts the program of payments and prioritize distributions of the cash money to creditors.

-Even if the implementation of split VAT would determinate the insolvency companies or the ones that are in debts, to transfer the earned money from all the transactions to treasury accounts, however, this regulation is contradictory with the purpose of what the procedure of insolvency was made for.

REFERENCES

- [1]Government Ordinance No. 23/2017 on the payment of VAT
- [2]Law No. 215/2017 on the application of the measure on the disbursement of VAT
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