

Tax risk assessment for VAT registrations

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On 3rd October 2017 the government published new criteria for evaluating tax risk factors in VAT registrations. In addition to a more transparent process, there is now an obligation to hear the taxpayer's application in person, before VAT registration can be rejected; taxpayers can also now appeal against a negative decision. Key criteria for the assessment are outlined below.

Scope of application

The new directive¹ is applicable to Romanian companies in the following cases:

1. Taxpayers based in Romania, who apply for registration by option²: at the time of foundation or if not exceeding a turnover limit of 220,000 RON;
2. Taxpayers who apply again for registration after an official annulment of VAT registration³;
3. Annulment of tax registration after identifying a significant tax risk⁴.

Non-resident taxpayers obliged to register for VAT-purposes (eg. branch office) are not affected by this directive.

The directive is applicable for all procedures which will start from October 2017 (not applicable for procedures already in process).

The criteria

The directive regulates the criteria for the facts under points 1 and 2 regarding the assessment of the tax risk. All risk factors which are listed below will be rated with a negative score; the resulting negative sum is then subtracted from 100. For a positive outcome on the registration application (meaning the assumption of a low tax risk) a minimum of 51 points is required.

The most relevant of the 15 criteria mentioned in the directive (including examples which indicate the presence of risks) are:

1. **Registered office** – located at an attorney's office or similar and/or it has been established for less than a year;
2. **Insolvency** – at least one of the directors or shareholders has or had a significant share of an insolvent company with tax arrears.
3. **Previous / additional functions of the director / shareholder** – at least one of the directors or shareholders has or had this function for specific periods at one or more problematic companies. This includes companies which are inactive, decommissioned, have a rejected or annulled registration, have tax arrears, etc;
4. **Tax offence** – a director or a shareholder has an entry for a tax offence in their tax certificate of conduct.

5. **Income (of directors or shareholders)** – a director had no earnings for the past 12 months;
6. **Tax residency** – the director is a foreign citizen and the share capital is less than 45,000 RON
7. **Bank account** – the company does not hold a bank account or the person authorized to dispose is not a shareholder, director, or employee.
8. **Place of business activities** – the company is only active at a third-party location or not at all.
9. **Accounting** – the company has no qualified head of accounting (economist or CECCAR-member);
10. **Employees** – No contracting, except for accounting purposes.

Conclusion

The greater transparency of the tax risk assessment procedure is generally welcome – we have all been longing for this for years. (See previous articles). We also see the new obligation to consult as a positive step, as is the now explicitly regulated right to appeal against a negative decision. It remains to be seen how much time it will take to settle such disputes in practice.

We would prefer to have seen publication of the point-factor-system used for the risk assessment. This would have given taxpayers the chance to see whether they could reach the 51-point limit, or at least to verify the decisions. However, we hope that this will be done in the future.

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¹ Directive no. 2856/2017

² Art. 316 para. 1 lit. A and c tax law - StG

³ Art. 316 para. 12 lit. e StG

⁴ Art. 316 para. 11 lit. h StG