



COMMISSION IMPLEMENTING REGULATION (EU) 2023/2493

of 15 November 2023

on the treatment for national accounts purposes of the non-collected VAT due to VAT fraud and due to insolvency (the discrepancy between theoretical VAT receipts and actual VAT receipts) for the application of Regulation (EU) 2019/516 of the European Parliament and of the Council on the harmonisation of gross national income at market prices

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/516 of the European Parliament and of the Council of 19 March 2019 on the harmonisation of gross national income at market prices and repealing Council Directive 89/130/EEC, Euratom and Council Regulation (EC, Euratom) No 1287/2003 (GNI Regulation) ⁽¹⁾, and in particular Article 5(3) thereof,

Whereas:

- (1) The treatment of non-collected value added tax (VAT) is one of the issues included in Commission Delegated Regulation (EU) 2020/2147 ⁽²⁾, which lists the issues to be addressed in every verification cycle so as to ensure the reliability, exhaustiveness and comparability of the gross national income at market prices ('GNI') data.
- (2) For data on GNI to be reliable, exhaustive and comparable, the treatment in national accounts of non-collected VAT due to VAT fraud and due to insolvency needs to be clarified.
- (3) Such treatment may require an adjustment related to the component of the discrepancy between theoretical VAT receipts and actual VAT receipts which is attributable to evasion not involving the connivance of the buyer ('without complicity') and the non-collected VAT due to insolvency.
- (4) GNI aggregates and their components should be comparable across Member States and should comply with the relevant definitions and accounting rules of the European system of accounts 2010 (ESA 2010) as laid down in Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council ⁽³⁾.
- (5) The treatment laid down in Commission Decision 98/527/EC, Euratom ⁽⁴⁾ should be replaced by means of this Implementing Regulation, taking into account of the results of the work undertaken on this issue as part of the GNI verification.
- (6) Decision 98/527/EC, Euratom should therefore be repealed.
- (7) The measures provided for in this Implementing Regulation are in accordance with the opinion of the European Statistical System Committee referred to in Article 8 of Regulation (EU) 2019/516,

⁽¹⁾ OJ L 91, 29.3.2019, p. 19.

⁽²⁾ Commission Delegated Regulation (EU) 2020/2147 of 8 October 2020 supplementing Regulation (EU) 2019/516 of the European Parliament and of the Council by defining the list of issues to be addressed in every verification cycle (OJ L 428, 18.12.2020, p. 9).

⁽³⁾ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

⁽⁴⁾ Commission Decision 98/527/EC, Euratom of 24 July 1998 on the treatment for national accounts purposes of VAT fraud (the discrepancies between theoretical VAT receipts and actual VAT receipts) (OJ L 234, 21.8.1998, p. 39).

HAS ADOPTED THIS REGULATION:

Article 1

1. The Member States shall calculate the value of non-collected VAT by applying the methods set out in the Annex to this Implementing Regulation. The value of non-collected VAT includes VAT non-collected due to evasion 'without complicity' and, if relevant, VAT non-collected due to insolvency.

2. For the purposes of the calculation in the first paragraph, the Member States shall determine theoretical VAT receipts and actual VAT receipts and calculate the discrepancy between these two amounts, by applying the following general formula:

Non-collected VAT = Theoretical VAT receipts *less* actual VAT receipts *less* missing revenue (due to evasion 'with complicity')

3. Actual VAT receipts are recorded as taxes D.211 as laid down in ESA 2010 paragraphs 4.26 – 4.28. Depending on the source from which the actual VAT receipts are derived (amounts evidenced by assessments and declarations or cash receipts), the following three options for estimating non-collected VAT within the above general formula are possible:

(a) Option 1a (based on ESA 2010 paragraph 4.27a – D.211 derived from assessments and declarations adjusted by a coefficient reflecting assessed and declared amounts never collected):

Non-collected VAT (due to evasion without complicity and due to insolvency) = Theoretical VAT receipts *less* actual VAT receipts evidenced by assessments and declarations adjusted by coefficient *less* missing revenue (due to evasion 'with complicity');

(b) Option 1b (based on ESA 2010 paragraph 4.27a – D.211 derived from assessments and declarations; capital transfer D.995 to the relevant sectors recorded, reflecting assessed and declared amounts never collected):

Non-collected VAT (due to evasion without complicity) = Theoretical VAT receipts *less* actual VAT receipts evidenced by assessments and declarations *less* missing revenue (due to evasion 'with complicity');

(c) Option 2 (based on ESA 2010 paragraph 4.27b – D.211 derived from time-adjusted cash receipts):

Non-collected VAT (due to evasion without complicity and due to insolvency) = Theoretical VAT receipts *less* actual VAT receipts based on time-adjusted cash *less* missing revenue (due to evasion 'with complicity').

4. The Member States shall, if necessary, adjust the estimates of value added and operating surplus included in their estimates of gross national income at market prices and gross domestic product at market prices made in accordance with Regulation (EU) 2019/516 by adding to it the value of non-collected VAT, calculated using the formula set out in paragraph 2. This adjustment within value added (and consequently within operating surplus) shall be made by adjusting output and/or intermediate consumption.

Article 2

In order to make the adjustment described in Article 1, the Member States may apply a method which is equivalent to that set out in Article 1, and which produces comparable results.

Article 3

The Member States shall include in their respective inventory of the sources and methods used to produce GNI aggregates and their components in accordance with ESA 2010 ('GNI Inventory') a description of the sources and methods applied, and state the value of the adjustments made.

Article 4

If a Member State can demonstrate to the Commission that the equivalent treatment of non-collected VAT is already implicit in its accounts, Article 1 does not apply to that Member State. Any Member State wishing to demonstrate that the equivalent treatment of non-collected VAT is already implicit in its accounts, shall provide the relevant description in the GNI Inventory.

Article 5

Irrespective of whether a Member State uses the method described in Article 1 or, the method described in Article 2 or follows an equivalent treatment that ensures an implicit inclusion of non-collected VAT in its accounts as laid down in Article 4, every Member State shall – at least every 5 years – make a comparison of the theoretical VAT and actual VAT receipts, analyse the discrepancy and include the results of this analysis in the GNI Inventory, starting with the GNI Inventory for the verification cycle 2025-2029.

Article 6

Decision 98/527/EC, Euratom is repealed.

Article 7

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 November 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

The value of non-collected VAT (due to evasion not involving the connivance of the buyer ('without complicity') and, if relevant, due to insolvency) is calculated using the two following variables:

- (1) the value of theoretical VAT receipts;
- (2) the discrepancy between theoretical VAT receipts and VAT receipts actually collected.

Calculation of theoretical VAT receipts

The theoretical VAT receipts are the amounts of VAT which would be collected if all units subject to VAT were to pay it as required by law.

Theoretical VAT is neither a concept nor an aggregate of ESA 2010. It is possible to estimate theoretical VAT in an ad-hoc calculation model, which isolates the non-deductible VAT implicitly included on the expenditure side of the accounts (i.e. included but not disclosed in the expenditure valued at purchasers' prices).

In particular, in order to calculate theoretical VAT receipts, the first step is to bring the VAT base into line with current legislation: in other words, to identify all the transactions which are subject to non-deductible VAT. This calculation is made using the most granular disaggregated national accounts data available. The VAT base is calculated in the light of all current legislation and rules governing VAT.

The second step is to apply the appropriate rate of VAT to each transaction constituting the VAT base as defined in the previous paragraph. The VAT rates applied must be those in force during the year for which the VAT base has been calculated (taking due account of any changes that occur during the year). Theoretical VAT receipts are calculated in the light of all current legislation and rules governing VAT.

Identification of all transactions in the economy where non-deductible VAT should be charged requires a very detailed analysis of expenditure (final consumption, intermediate consumption, gross fixed capital formation) to isolate what transactions are taxable and which purchasers cannot deduct the VAT (which in turn depends on a combination of factors like institutional sector, economic activity and size). The following categories of transactions (for the part subject to non-deductible VAT) should be considered in the calculation of theoretical VAT:

- Household Final Consumption Expenditure (domestic concept, i.e. expenditure on the domestic territory);
- Intermediate consumption of the sector S.13 (after applying pro-rata of non-deductibility for the sector);
- Intermediate consumption of the sector S.15 (after applying pro-rata of non-deductibility for the sector);
- Intermediate consumption of the sectors S.11, S.12 and S.14 (after applying pro-rata of non-deductibility for the individual activities);
- Social transfers in kind purchased by the sector S.13;
- Social transfers in kind purchased by the sector S.15;
- Gross Fixed Capital Formation of the sector S.13 (after applying pro-rata of non-deductibility for the sector);
- Gross Fixed Capital Formation of the sector S.15 (after applying pro-rata of non-deductibility for the sector);
- Gross Fixed Capital Formation of the sectors S.11, S.12 and S.14 (after applying pro-rata of non-deductibility for the individual activities); and
- Acquisitions less disposals of valuables.

For some types of transactions, it is necessary to apply a 'pro-rata of non-deductibility' to account for the fact that only parts of the relevant expenditure of the given institutional sector or activity are subject to non-deductible VAT. In these cases such pro-rata of non-deductibility has to be applied, based on the share of exempt output in the total output of the given sector/activity.

Furthermore, expenditure on some products being subject to national restrictions in the right to deduct input VAT (e.g. business cars and related expenditure, 'representation costs', etc.) should be considered across the board, irrespective of the pro-rata of non-deductibility for the activities or sectors (as appropriate).

The model should – to the extent possible – take account of some other particularities, like e.g.:

- Existence of special VAT schemes for small firms below a certain registration threshold;
- Existence of other special VAT schemes: flat-rate farmers, margin scheme for tour operators etc.;
- Correct exclusion of the consumption of goods produced on own-account;
- Correct exclusion of the tax-free purchases in duty-free shops;
- Inclusion of transactions that are not in the goods and services account but may be subject to non-deductible VAT, e.g. purchases of building land.

Estimation of the tax in each of the aforementioned transactions constituting the VAT base is done by applying the appropriate VAT rate: e.g. if a transaction is valued 150 at purchaser's price and rated at 20 %, the implicit VAT behind it would be estimated as $150/1,2 \times 0,2 = 25$).

This calculation may need to be fine-tuned if the transaction in question is subject to VAT fraud with complicity of the customer, given that in national accounts the purchaser's price of transactions subject to such fraud should not include the thus evaded VAT. Therefore, in this case, if it is known that the value of the good/service subject to VAT fraud with complicity embedded in the purchaser's price is 30 (and it is known that the related evaded VAT is not included in the total of 150), the value of the VAT embedded in the purchaser's price would be calculated as: $(150 - 30)/1,2 \times 0,2 = 20$. The net value of 'regular' transactions and transactions subject to VAT fraud without complicity, on which the VAT was captured in the purchaser's price would be 100, the related VAT included in the purchaser's price would be 20, the value of transactions subject to VAT fraud with complicity would be 30, and VAT with complicity included in the purchaser's price – 0. The VAT evaded with complicity would amount to $30 \times 0,2 = 6$. The ultimate value of theoretical VAT would amount to $20 + 6 = 26$.

Given the level of detail required to calculate theoretical VAT, this calculation should be based on the most disaggregated national accounts data available, by product. The Supply and Use Tables (SUT) offer a suitable framework for such a calculation. However, even the most detailed SUT data will not provide the breakdown that would fully correspond to the details of the VAT taxation of individual products, activities or sectors. Therefore, inevitably, supplementary information from other sources has to be explored in order to accurately reflect the VAT legislation in place. These sources include detailed fiscal and/or administrative records or statistical surveys. In certain cases, in order to establish the necessary splits, one has to resort to one-off studies, different weighting patterns, expert estimates or assumptions.

Calculation of the discrepancy between theoretical VAT receipts and VAT receipts actually collected and its analysis

The discrepancy between theoretical VAT receipts (calculated in the light of all current legislation and rules) and actual VAT receipts comprises two components:

- (1) VAT evaded involving the buyers' connivance (with complicity) (cases where the buyer does not pay VAT to the seller; this implies that VAT has not been invoiced);
- (2) VAT evaded not involving the buyers' connivance (without complicity) (cases where the buyer pays VAT to the seller, but the latter fails to remit it to the tax authorities, including cases of insolvency of the seller; this implies that VAT has been invoiced and therefore also cases of missing trader VAT fraud should be considered here).

As a result, the value of non-collected VAT (due to evasion 'without complicity' and, if relevant, due to insolvency) is arrived at by deducting VAT evaded 'with complicity' from the discrepancy between theoretical VAT receipts and actual VAT receipts.

Non-collected VAT = Theoretical VAT receipts *less* actual VAT receipts *less* missing revenue (due to evasion 'with complicity')

Actual VAT receipts are the amounts actually collected by the tax authorities for the period to which the calculation of theoretical VAT receipts relates. Actual VAT receipts are recorded as taxes D.211 as laid down in ESA 2010 paragraphs 4.27 – 4.28. These recorded taxes D.211 are to be on accrual basis in line with ESA 2010 paragraph 4.26. Actual VAT receipts can be derived from amounts evidenced by assessments and declarations adjusted by a coefficient reflecting assessed and declared amounts never collected (option 1a), from assessments and declarations using a capital transfer (D.995) for amounts never collected (option 1b) or from time-adjusted cash receipts (option 2).

There may be instances where current legislation entitles the tax authorities to make cancellations of VAT claims in cases of insolvency. In such cases the amounts of VAT non-collected due to insolvency would be included in D.211, if D.211 is derived from assessments and declarations with the capital transfer D.995 reflecting the cancellations (option 1b) and would not be included in D.211 in case time-adjusted cash or assessments and declarations with a coefficient on D.211 is used (option 1a and option 2).

The value of VAT evaded 'with complicity' may be calculated, by convention, taking into account activities in respect of which an adjustment for undeclared work has been made.

By using this method, applying the adjustment for undeclared work made to the output of branches of economic activity and multiplying the corresponding amounts of undeclared sales by the appropriate rates of VAT, it is possible to estimate the value of 'missing' VAT receipts which the tax authorities have been denied because of VAT evasion 'with complicity'.

By way of example: if, following an adjustment for undeclared work, the estimate of the household consumption of a given product, excluding VAT, is increased by 15 %, and if the rate of VAT applying to purchases of that product is 20 %, the amount owing to the tax authorities can be calculated as follows:

Missing VAT receipts due to evasion 'with complicity' = value of sales of the product before adjustment $\times$ 15 % $\times$ 20 %.

Other possible approaches to the distinction between the VAT fraud with and without complicity include e.g. use of fiscal data or expert assumptions on which activities are involved in the different types of fraud.

Recording of non-collected VAT in national accounts

Assuming that transactions that are not reported to tax authorities are not reported to statistical authorities either, and unless the values of non-collected VAT (due to evasion without complicity and due to insolvency) are already implicitly included in the accounts, the following adjustments to the national accounts transactions should be made, where appropriate, to account for the non-collected VAT calculated according to the method described above (or an equivalent method):

- (1) On the production side: the value of the non-collected VAT is to be included in the value added of the seller.
- (2) On the income side: the value of the non-collected VAT is to be included in the operating surplus of the seller.
- (3) On the expenditure side: the value of the non-collected VAT is to be included in the purchaser's price of the good or service. Thus, the value of non-collected VAT should be included in household final consumption and gross fixed capital formation. Depending on the sources and methods used to estimate the expenditure categories the respective amounts can already be included in the source data (e.g. if a Household Budget Survey is used) or would have to be explicitly added (e.g. if indirect methods like a commodity flow method or quantity $\times$ price methods are used).

VAT evaded in fraud with complicity is not to be recorded in the accounts, because it is not paid by the buyer. VAT paid by the buyer but non-collected because of evasion without complicity and/or insolvency is to be recorded in the respective categories indicated in the points 1-3 above.
