

Professional Paper
UDK: 336.2

Paper received: 26/07/2017

Paper Accepted: 28/08/2017

THE ROLE OF VAT ON CORPORATE SOCIAL RESPONSIBILITY IN CROATIA

*Ivan Petarčić, Professional Specialist for Corporate Finances
RRiF Plus d.o.o., Zagreb, Hrvatska
ivan@rrif.hr*

ABSTRACT

The new Accounting Act from 2016 has transposed the Directive 2014/95/EU (The Non-Financial Reporting Directive) into Croatian national legislation. It has obligated large public-interest companies with more than 500 employees to disclose non-financial information. Companies are required to include non-financial statements in their annual reports from 2018 onwards. In this way, the question of corporate social responsibility came to the forefront in Croatia.

This paper will show how the state encourages taxable persons to act socially responsible through certain provisions of the Value Added Tax Act. The provisions to be dealt with relate to food donation and processing of used materials and waste.

Key words: *value added tax, corporate social responsibility, food donation, used materials, waste*

1. INTRODUCTION

The obligation to compile and present non-financial reports has raised awareness of corporate social responsibility in Croatia. There is no universal agreement on the definition of corporate social responsibility (hereinafter: CSR), rather, it can be defined in a variety of ways. In principle, it can be said that CSR refers to how organizations manage their business processes in order to achieve a positive impact on society. In the strict sense, CSR refers to the assumption of the organization's responsibility for the performance of its

activities on society and the environment, whereby these activities must be in accordance with the interests of society and legal regulations, provided that they are based on ethical conduct.

There is a general misconception that doing business in a socially responsible way is expensive, inefficient and wasteful of human resources and that this business approach cannot maximize profit. However, the state can certainly help companies/enterprises that want to be socially responsible through a number of different instruments and incentives. As it will be shown below, in the case of the Value Added Tax Act (Official Gazette, No. 73/13 – 115/16) the state encourages enterprises to do business in a socially responsible manner when it comes to donating food and delivering waste to authorized waste dealers.

2. DONATING FOOD

Food donation is any food or animal feed donated free of charge to end recipients. The donation of food and feed in the Republic of Croatia is regulated by the Agriculture Act (Official Gazette, No. 30/15) and the Regulations on the Conditions, Criteria and Ways of Donating Food and Feed (Official Gazette, No. 119/15, hereinafter: Regulations on donation). Article 73 of the Agriculture Act provides for the donation of food and feed in order to prevent the destruction of large quantities of food, protect the environmental and provide assistance to end recipients. Only food and feed which is suitable for human and/or animal consumption and has met all safety and health requirements in accordance with both EU and national regulations can be donated.

2.1. BASIC FOOD SAFETY REGULATIONS

Food safety is based on the following regulations:

- Food Act (Official Gazette, No. 81/13, 30/15)
- Act on Food Hygiene and Microbiological Criteria for Food (Official Gazette, No. 81/13)
- Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures regarding food safety
- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs
- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal

origin Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption

- Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives regarding food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC
- Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene

2.2. TERMS OF DONATION

The Regulations on donation set out the detailed conditions, criteria and methods of donating food and feed, the conditions to be fulfilled by the intermediary in the donation of food and feed (hereinafter: intermediary), as well as the content and ways of keeping the Register of intermediaries.

In accordance with Article 5 of The Regulations on donation, donors can donate food to the end recipient who is:

- a person in need who is a socially vulnerable person and / or
- a person affected by natural disasters in the sense of the Act on Protection from Natural Disasters (Official Gazette, No. 73/97 - 174/04).

The donation of food to the end recipient (i.e. a person in need who is a socially vulnerable person) includes giving food to the beneficiary of rights in the social welfare system under the Social Welfare Act (Official Gazette, No. 157/13, 99/15) and beneficiaries of social services under the general acts of local and regional government and the person who seems likely to be in need of a such donation.

The subject of donation in accordance with Article 6 of The Regulations on donation can only be food that is in accordance with Regulation (EC) No 178/2002 and the Food Act. This can include food that is not suitable for further sale due to changes in quality, packaging, labelling, weight or other similar reasons that do not compromise food safety. Also, this can include food produced or prepared in food establishments and food bars or buffets within supermarkets provided that it has not been served to the end consumer yet. Food containing the »use -by« date must be donated to the final recipient only before the expiry of that date.

Food donation is considered to be done in order to prevent its destruction, protect the environment and provide assistance to end recipients if:

- a). donated food for which it seems likely that it cannot be sold by the end of the "use-by" date, and is donated in a period of up to three months before the end of the »use -by« date
- b). donated food for which it seems likely that it cannot be sold until the expiry of the minimum durability ("best-before") date and is donated in a period from three months to at least seven days before the expiration of the minimum durability date
- c). donated food which is not suitable for sale due to changes in quality, packaging, labelling, weight or other similar reasons that do not affect or compromise food safety.

2.3. DOCUMENTS AND RECORDS REQUIRED

The Regulations on donation stipulates the documents that must accompany the donated food and the records by both the donor and the intermediary. According to Article 10 of The Regulations, donated food must also be accompanied by documents regarding its delivery and receipt.

The donor is obliged to keep a record of food donations, which must contain information on: delivery notes, date of delivery, name, type, quantity and expiration dates of food, purchase price (excluding VAT), VAT amount as well as information on intermediaries or end recipients in the event of direct (unmediated) donation.

The intermediary, on the other hand, is obliged to keep track of the following:

- Records of food donations from donors or citizens which must contain information on: receipts or confirmations, date of receipt, name, type, quantity and expiration dates of food as well as information on said donor or citizen.
- Records of food confiscated in misdemeanour proceedings which must contain information on: documents on the basis of which the food is assigned to the intermediary, name, type, quantity and the expiration dates of food.
- Records of food receipts from other intermediaries which must contain information on: documents (delivery notes, receipts), date of receipt, name, type, quantity and the expiration dates of food as well as information on the intermediary from which the food was received.
- Records of received and unused food which has been adequately disposed of in accordance with special regulations.

Donors and intermediaries are obliged to submit data accumulated from the aforementioned records to the Ministry of Agriculture for the period and within the deadlines prescribed for the submission of value added tax. This means, that the data collected in the previous month in case of monthly payers is due at the latest by the 20th of every month, and data collected in the previous quarter (in case of payers who pay their VAT quarterly) is due latest by the 20th of the subsequent month.

2.4. TAXABLE POINT OF DONATION

Donors can be companies, dealers, family agricultural holdings and other taxpayers of profit tax or income tax, who may or may not be subject to value added tax. Therefore, donor tax liabilities should be observed from the point of view of profit tax, income tax and value added tax.

Donations from profit tax payers may be tax deductible if they are executed under certain conditions governed by Article 7 paragraph 7, of the Profit Tax Act (Official Gazette, No. 177/04 - 115/16). Namely, according to the above provision, donations are considered gifts or gifts made in the country for cultural, scientific, educational, health, humanitarian, sporting, religious, environmental and other general-purpose to associations and other persons performing these activities in accordance with Special regulations. The other persons, pursuant to Article 30 section 3 of the Regulations on Profit Tax (Official Gazette, No. 95/05 - 1/17) include the bodies of state, local and regional self-government. However, only donations of up to 2% of revenue earned in the previous year are tax deductible for enterprises; if they are higher than the percentage above, they are non-deductible.

However, in accordance with Article 30 paragraph 4 of the Regulations on Profit Tax *on donations referred to in Article 7 paragraph 7 of the Act may also include the donations of taxpayers who are producers and food retailers and who, in order to prevent the destruction of large quantities of food and to protect the environment, donate food to persons referred to in Article 7 paragraph 7 of the Law on social, humanitarian and other purposes of assistance, and to persons affected by natural disasters, provided that such donations are carried out in accordance with special regulations referred to in paragraph 6 of this Article.* Accordingly, food donations can be tax deductible even when their total amount exceeds 2% of revenue earned in the previous year, but provided that the donation was made in accordance with the special regulations of the Ministry of Agriculture, the Agriculture Act and the Regulation on the conditions, criteria and ways of donating food and feed.

The same conditions are prescribed under Article 15 paragraph 2 of the Income Tax Act (Official Gazette, No. 115/16) and Article 13 of the Income Tax Ordinance (Official Gazette, No. 10/17) for donors who are income tax payers.

When it comes to the treatment of VAT delivery, in accordance with Article 26 paragraphs 5 and 6 of the Value Added Tax Ordinance (Official Gazette, No. 79/03, 41/17)¹, VAT is not included in the donated food only when it is donated to non-profit legal entities that carry out humanitarian activities in accordance with the above-mentioned legislation on the donation of food and feed and that are registered as intermediaries participating in the food donation chain. It is a condition that the donations do not exceed 2% of revenue or receipts of the previous year. In the case of natural disasters the tax-deductible shortage of goods shall also include deliveries made directly to the final recipients in accordance with the Regulations on the conditions, criteria and ways of donating food and feed. For the purpose of calculating the value of deliveries considered as a tax-deductible deficit, the purchase value of such food (excluding VAT) is taken into account. For all gifts above 2% of total revenue of the previous year, i.e. donations made to non-profit organizations and end beneficiaries, and not in accordance with the above-mentioned rules, the donor is obliged to calculate and pay VAT on the purchase value of the goods (including related purchase costs), i.e. in case the donor is a producer, the VAT must be calculated at the cost of production of the goods.

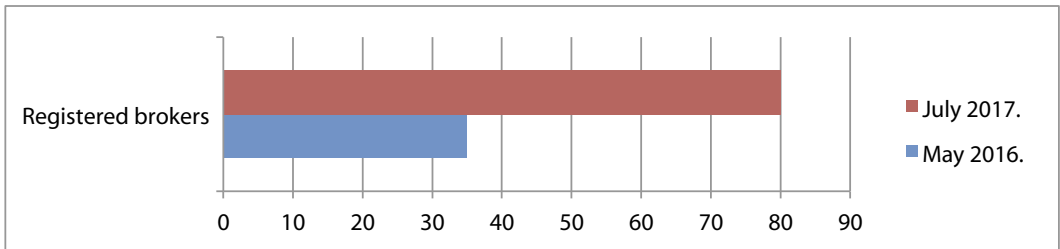
A taxpayer who donates food and feed is obliged to report to the Tax Administration on the donations made, by submitting a Report on donated food (The DONH report) in electronic form. It is required to submit this form by the 20th of the month for the previous month (quarterly – in case of quarterly payers).

2.5. THE IMPORTANCE OF TAX TREATMENT FOR DONORS

Tax treatment of donated food and feed is of great importance to donors. As of December 8th 2015, donations made in accordance with the regulations above, provided that the cost of donating doesn't exceed 2% of the revenue of the previous year, are tax deductible, and supply is not subject to VAT calculation. In this way, the state encourages producers and traders to act in a socially responsible way. The only problem is that there are still very few registered intermediaries in the food donation chain.

¹ The provisions above are in force since December 8th 2015. Until then, VAT was charged on donated food.

Chart: An overview of registered intermediaries



Source: Made by the author according to the data from the Intermediary Register

Namely, in July of 2017 there are 80 intermediaries in the register. Considering that in May of 2016 there were a total of 35 registered intermediaries, it can be concluded that growth is somewhat satisfactory.

3. DISTRIBUTION OF RAW MATERIALS AND WASTE

Waste is any substance, object or unwanted material which has no value to the holder and which the holder discards or intends to discard. Waste is also considered to be any object whose collection, transport and processing are necessary for the purpose of protecting the interests.² Waste management in the Republic of Croatia is regulated by the Act on Sustainable Waste Management and the Regulations on Waste Management (Official Gazette, No. 23/14, 132/15). The Act lays down measures to prevent or reduce the impact of waste on human health and the environment by reducing the amount of waste generated and/or produced, regulates waste management controlling the use of substances hazardous to human health and the environment and the use of valuable properties of waste. In addition, the Act establishes a system of waste hierarchy providing a priority order in waste prevention and management, principles, objectives and methods of waste management, waste management responsibilities and obligations, as well as waste management information system, administrative supervision and inspections of waste management.

Almost all businesses, regardless of their particular type of business activity, are dealing with the process of depositing, disposing or discharging waste and used materials. Considering that waste can have a high value and waste business is becoming more and more attractive, there is a large number of waste buyers, dealers and brokers who have a common interest in selling waste and used materials.

² Article 4 paragraph 1 item 35 of the Act on Sustainable Waste Management (Official Gazette, No. 94/13).

In accordance with Article 4 paragraph 1 item 62 of the Waste Management Act, a waste dealer is a legal or natural person who, in his own name and on his own account, purchases and sells waste, including a waste dealer who does not take waste in immediate physical possession. Entrepreneurs who want to deal with waste trade must register for the purpose of carrying out waste trading, enter the End-of-Waste Register and appoint a person responsible for waste management.

In the case of the delivery of waste and used materials by the taxpayer, the provisions of the VAT Act and the VAT Regulation which regulate the taxation of these deliveries should be considered.

3.1. TAXATION ON THE SUPPLY OF USED MATERIALS AND WASTE

Council Directive 2006/112/EC (hereinafter: VAT Directive) provides the Member States of the European Union with the possibility to transpose into their national legislation provisions relating to the transfer of tax liability for the supply of used materials and waste. Namely, Article 199 of the VAT Directive states that Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

... (d) the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI.

Supplies of goods and services referred to in point (d) of Article 199(1) listed in Annex VI are the following:

(1) Supply of ferrous and non ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of ferrous and non-ferrous metals and their alloys;

(2) supply of ferrous and non-ferrous semi-processed products and certain associated processing services;

(3) supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, scale and industrial residues containing metals or their alloys and supply of selection, cutting, fragmenting and pressing services of these products;

(4) supply of, and certain processing services relating to, ferrous and non-ferrous waste as well as parings, scrap, waste and used and recyclable material consisting of cullet, glass, paper, paperboard and board, rags, bone, leather, imitation leather, parchment, raw hides and skins, tendons and sinews, twine, cordage, rope, cables, rubber and plastic;

(5) supply of the materials referred to in this annex after processing in the form of cleaning, polishing, selection, cutting, fragmenting, pressing or casting into ingots;

(6) supply of scrap and waste from the working of base materials.

All points mentioned above are implemented into Croatian legislation in the same way. This is regulated by Article 75 paragraph 3 item b) of the VAT Act and Article 152 paragraph 3 of the VAT Regulation. This means that, "when delivering used materials that cannot be used in the same state, along with waste and services related to their processing, it applies for a tax liability transfer when it comes to delivery between the two taxpayers in the Republic of Croatia."³ This practice is also referred to as the domestic transfer of tax liabilities.

This means that, when delivering used materials and waste to a taxpayer in the country, the value-added tax is not charged to the seller, but instead he issues the invoice without VAT, and the buyer is obliged to determine the VAT amount in its tax records. Therefore, neither the seller nor the buyer need to pay VAT when trading in used materials

3.2. IMPACT OF DOMESTIC TRANSFER OF TAX DUTY ON CSR

By applying the transfer of tax liability to the supply of used materials and waste, taxpayers are encouraged, to sell waste and used materials that can no longer be used to waste dealers, without having to pay VAT on supply of goods. Thus, the value of the supply is not increased for VAT, which makes it more attractive for both the seller who does not have to calculate VAT and the customer who does not have to pay VAT and who is therefore less burdened by the cash flow.

According to the waste management hierarchy, there is a priority order in waste prevention, which is to prevent waste generation in the first place, followed by preparing for re-use, recycling, other recovery operations and disposal. Unfortunately, something like that cannot be avoided in every process. However, the socio-economic and environmental benefits are still there: the waste dealers will distribute all aforementioned goods (including goods supplied by the waste producers, and used materials that can no longer be used for their intended purpose) further to those who will use it as raw material or material in production, recycle or otherwise recover. Through these methods, materials are constantly being recovered, reused and recycled in a process called circular economy, as opposed to a linear economy which favours a 'take, make and dispose' model of production.

³ Markota, Lj. et al. (2015). Value added tax. Zagreb: VII. changed publication, RRiF-plus

4. CONCLUSION

When it comes to food waste prevention, sustainable waste management and encouraging the circular economy, great efforts are needed in order to accomplish this, not only on national and European, but also on a global scale.

Most companies tend to maximize profits and achieve more favourable cash flow, but they should also strive to minimize negative impacts of their businesses and take into account their possible influence on society and the environment in order to be recognized as a CSR company. They can find tax treatment of certain supplies as a barrier that may adversely affect their business decisions and distract them from making choices that can bring benefits to society in the long term.

Through implementation of the VAT exemption on food donation and implementation of the transfer of tax liability on the supply of used materials and waste, the VAT Act and the VAT Regulation have proved that tax provisions and incentives can also have a positive influence on corporate social responsibility and circular economy as a whole.

5. REFERENCES:

1. Markota, Lj. et al. (2015). Value added tax. Zagreb: VII. changed publication, RRiF-plus
2. Act on Sustainable Waste Management and the Regulations on Waste Management, Official Gazette, No. 23/14, 132/15
3. Agriculture Act, Official Gazette, No. 30/15
4. Profit Tax Act, Official Gazette, No. 177/04 - 115/16
5. Value Added Tax Act, Official Gazette, No. 73/13 - 115/16
6. Income Tax Act, Official Gazette, No. 115/16

ULOGA PDV-a U DRUŠTVENOJ ODGOVORNOSTI PODUZEĆA U HRVATSKOJ

SAŽETAK RADA:

Novi Zakon o računovodstvu koji je donesen na temelju Direktive 2014/95/EU obvezao je na sastavljanje nefinancijskog izvještaja velike hrvatske poduzetnike koji su subjekti od javnog interesa i koji na datum bilance prelaze kriterij prosječnog broja od 500 radnika tijekom prethodne poslovne godine. Time se u Hrvatskoj istaknulo pitanje društveno odgovornog poslovanja.

U ovome radu prikazat će se kako država potiče obveznike poreza na dodanu vrijednost na društveno odgovorno poslovanje putem pojedinih odredaba Zakona o porezu na dodanu vrijednost. Odredbe koje će biti obrađene odnose se na darivanje hrane te isporuku rabljenog materijala i otpada.

Ključne riječi: *porez na dodanu vrijednost, društveno odgovorno poslovanje, donacija hrane, rabljeni materijal, otpad*

