VAT IMPACT ON A COMPANY'S CASH FLOW
FOR COMPANIES THAT ARE IMPLEMENTING PROJECTS FINANCED FROM NON-REFUNDABLE EU FUNDS

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"The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of hissing." - Jean-Baptiste Colbert

<u>Abstract</u>

The VAT system is currently a much debated topic among companies, politicians and consumers. This interest derives from the complexity and deficiencies that it entails, with multiple financial implications on companies, on the one hand, in terms of the cost of compliance, and on the other hand, its impact on cash flow.

Although initially the VAT system was adopted as a measure to ease the tax burden at the direct taxation level, such as the tax on income and capital, without influencing the financial situation of the taxable persons, it was subsequently proved that the changes caused by the evolution and intensification of foreign trade and technology have led to a violation of the basic principle of the tax, namely its neutrality.

Thus, the application of the VAT system can influence the short-term cash flow and the long-term financial situation of the company through all the system's components, namely: the nature of the operations that fall within the scope of VAT, the tax period, the nature of the legal persons in terms of VAT, tax deductibility, all exemptions applicable in a country, the special systems for enforcing the tax (the system of collecting VAT upon receiving a payment).

JEL Classification: H25

<u>Keywords</u>: nondeductible VAT, cash-flow, structural funds, operational programmes, absorption rate, SOP HRD (Sectoral Operational Programme - Human Resources Development), application for reimbursement.

<u>Introduction</u>

The absorption rate of non-refundable EU funds financed via structural instruments is relatively low in the case of Romania, as compared to other European countries. Mainly, the low level of projects funded by SOP HRD is due to the quite difficult financial mechanism. In the first years of implementation, neither the supervisory authorities nor the beneficiaries had sufficient experience for an efficient management of the projects. On the one hand, the applicable legislation was often contradictory and, on the other hand, the beneficiaries' financial issues related to the pre-financing granted, the eligible costs within the programme, the nondeductible VAT borne from their own budget, were the main reasons for the reduced use of non-refundable EU funds.

I chose this topic because very few companies - as beneficiaries of non-refundable EU funds, and people who are not directly involved in project implementation, understand the implications of VAT on expenditure financed via SOP HRD. The tax treatment of VAT until the end of 2011 was a dilemma for both the beneficiaries, especially for the commercial companies that are professional training providers, which undertake both activities exempted from VAT, without the right for deduction, and taxable operations, as well as for the authorities overseeing the operational programme, with significant implications on the cash flow situation of the beneficiaries.

By conducting this analysis, I have tried to identify the impact of the VAT that is not deductible for purchases made within the projects financed by SOP HRD, on the one hand by identifying the unequal treatment of beneficiaries depending on their status of taxable or non-taxable persons, and on the other hand, depending on the effective implementation of the projects, as reflected in the expenditure reimbursed by the Managing Authority, including the related VAT.

Stage of knowledge

The modern tax system is an increasingly large and diversified tax burden for eligible taxpayers, especially for small and medium-sized enterprises. The specialized literature[1] identifies three components of the VAT implications, namely:

- The tax itself;
- Costs of economic inefficiency, referring to the market distortions caused by these taxes;
- Costs of managing these taxes by the competent bodies, which are ultimately borne by the taxpayers in order to meet their tax obligations.

Also, the specialized literature has identified other costs of VAT, but which cannot be quantified, mainly referring to the psychic consumption[2] of the taxpayers caused by the tax system and its complexity. This cost includes elements of the following nature: stress, frustration and anxiety caused by the taxpayers' actions in order to meet their tax obligations. Unfortunately, until today, empirical analysis have not yet been carried out in order to quantify this psychological cost.

According to the studies identified on this subject (Cnossen, 1994; Evans, 2003), the main factors that cause the occurrence of compliance costs impacting the cash flow of businesses, primarily relate to the legislative complexity and the continuous amendment of the major elements of the VAT system (such as exemptions, deductions, changing rates, the nature of activities subject to taxation, etc.) and to the excessive procedural obligation regarding VAT.

The distortions caused by VAT, with an impact on the cash flow and profitability of businesses, are due to VAT exemptions for certain sectors and services. According to the study[3] conducted by Helmut Dietl, Christian Jaag, Markus Lang, Urs Trinkner (Competition and Welfare Effects of VAT Exemptions) the effects of asymmetric exemptions distorting the competition, on the one hand, represent a positive effect on the cash flow of the exempted businesses and on the consumers through the surplus created, but they affect the VAT payers by reducing their market share. Also, the authors have concluded that the implementation of different VAT regimes has an effect on the companies' decision to produce or to buy, so that the economic operators exempted from VAT are encouraged to use their own employees

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[1] Babone, L., Bird, R. M. and Vazquez-Caro, J. (2012). The Costs of VAT: A Review of the Literature, International Center for Public Policy, Working Paper, 12-22, April 2012.

[2] Evans, Chris (2008): "Taxation compliance and administrative costs: an overview," in Michael Lang, C. Obermair, J. Schuch, C. Staringer and P.Weninger

[3] Helmut Dietl, Christian Jaag, Markus Lang, Urs Trinkner, Competition and Welfare Effects of VAT Exemptions, Working Paper No. 133, September 2010

instead of outsourcing the provision of certain services, therefore, another distortion occurs, namely the VAT exemptions worsen the position held by the external service providers.

Another element of the VAT system with an impact on cash flows is the reverse charge regime. According to the study[4] conducted by the European Commission, the implementation of the reverse charge regime entails cash flow implications for the economic operators. This situation occurs due to the fact that the economic operator does not charge VAT on the sales made by it. Therefore, they cannot benefit from the advance money collected from the sales of goods until the time of payment to the tax authorities. Instead, the buyer economic operator, compared with the normal tax regime, does not pay VAT for purchases made before being able to deduct the VAT paid by it, therefore the impact on the buyer's cash flow is neutral.

Regarding the VAT treatment within the SOP HRD, according to GD no. 759/2007, the VAT on eligible expenditure made within the projects was not eligible from the non-refundable funding, a situation that existed until 2012. However, according to art. 15 of GEO no. 64/2009, the beneficiaries[5] for whom VAT was nondeductible, namely the "public institutions, non-governmental non-profit organizations, religious establishments, companies that have the status of professional training providers, conducting only VAT exempted activities, without a deductibility right, as well as the regional water operators" could have been reimbursed for the value added tax through a special mechanism for reimbursement of nondeductible and ineligible VAT, namely by filing a VAT refund application along with the application for reimbursement of expenditure incurred with the projects. The ineligible VAT from structural instruments was thus financed from the own sources of the OP (*Operational Programme*) Managing Authorities.

Starting with January 1, 2012, the provisions of Government Decision no. 759/2007 have been amended and supplemented by Government Decision no. 1135/09.11.2011. Through this regulatory document, amendments have been made to the VAT for projects financed via operational programmes. According to article 11^1, the following amendments were made:

- "the nondeductible VAT expense is eligible for all operational programmes;
- in order to be eligible, the nondeductible VAT expense should be related to certain eligible expenditure incurred within the projects financed with structural instruments;
- in order to receive a VAT refund, the recipient of the funds must submit, within 3 days, as an annex to each application for reimbursement, an affidavit on the nondeductibility of VAT for the expenses comprised in the application for reimbursement, certified by the competent tax authority within NAFA (*National Agency for Fiscal Administration*)."

Consequently, since 2012, the applicants for non-refundable funds from the operational programmes prepare their project budget by including in the total cost the nondeductible value added tax related to the eligible expenditure incurred with the operational programmes.

Regulations and instructions issued from 2010 until August 2012 in respect of the VAT related to procurement within the projects, as well as their sometimes contradictory contents, have caused the beneficiaries of funds to be unable to claim a VAT refund or only a partial one, because there was no clear methodology for the application thereof, in particular of GD no. 831/2012. Also, there have been cases in which commercial companies have deducted the VAT related to expenditure within the project.

Accordingly, in order to clarify which is the tax treatment of VAT relating to expenditure incurred with the projects funded by SOP HRD, the Ministry of Public Finance (MPF) published the Leaflet no. 559381/14.06.2013. According to this leaflet, the operations carried out within the projects should be treated as non-taxable operations, since "the final

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[4] European Commission – Assessment of the application and impact of the optional 'Reverse Charge Mechanism' within the EU VAT system, Final Report November 2014

[5] GEO no. 64 of June 3, 2009 on the financial management of the structural instruments and their use for the convergence objective, OFFICIAL JOURNAL no. 413 of June 17, 2009.

beneficiaries of these projects are the target groups to whom they are addressed, i.e. the persons benefiting from the services rendered free of charge by the beneficiaries of non-refundable funds." Therefore, the services provided by them are not compensated with a payment from the target group, and such transactions do not fall within the scope of VAT. Thus, the nature of the operations was established as being non-taxable, and in the case of companies carrying out professional training activities, they can no longer be considered exempted from VAT.

As a conclusion of the information contained in the Leaflet published by MPF, the VAT related to expenditure incurred with the projects shall be nondeductible, since *"the procurement is not intended for conducting deductible operations"*[6].

In order to implement the provisions of the said order, the MA SOP HRD (*Managing Authority for Sectoral Operational Programme - Human Resources Development*) issued the Instruction no. 83/06.12.2013 on the reimbursement of eligible nondeductible VAT related to the eligible expenditure incurred by the beneficiaries after August 13, 2012 and which were included in the applications for reimbursement already paid by MA SOP HRD. In order to receive a refund of nondeductible VAT, according to the Instruction, the beneficiaries had the obligation of filing an "addendum to the financing agreement by which they had to enter in the project budget the estimated amount of the nondeductible VAT. The condition was not to affect the total value of the project; therefore, it could have been done so only to the extent that savings have already been made in terms of the budget"[7].

In the case of applications for reimbursement of expenditure submitted after the issuance of this Instruction, the beneficiaries must submit the "affidavit relating to the nondeductibility of VAT on the expenditure contained in the application in question, certified by the competent tax authority"[8].

ANALYSIS

Input data and working hypotheses

Through this analysis I have tried to identify what are the implications of VAT related to eligible expenditure incurred within the Sectoral Operational Programme - Human Resources Development 2007-2013, on the cash-flow of the beneficiaries financed through this programme. The analysis consisted of comparing the situation of impairment of the cash-flow of beneficiaries who have concluded and implemented projects before 2012, when VAT was not financed from structural instruments, with the one of the beneficiaries who have signed funding contracts after the legislative changes concerning the eligibility of nondeductible VAT related to expenditure financed by the SOP HRD.

The structure of the study is presented as follows:

1. A comparison of the impact of VAT on the cash-flow of NGO type beneficiaries on the one hand, and of company type beneficiaries, on the other hand, who have implemented projects funded by SOP HRD before 2012, when nondeductible VAT was ineligible from non-refundable funds.

2. A comparison of the impact of VAT on the cash-flow of NGO type beneficiaries on the one hand, and of company type beneficiaries, on the other hand, who have implemented projects funded by SOP HRD after 2012, since nondeductible VAT is eligible from structural instruments.

[6] Leaflet no. 559381/14.06.2013, MPF

[7] Instruction no. 83/06.12.2013 on the reimbursement of eligible nondeductible VAT related to the eligible expenditure, MA SOP HRD.

[8] GD no. 204/27.12.2011 on approving the Instructions for the application of expenditure incurred with the operations funded through OP, Official Journal no. 940/30.12.2011.

I have quantified the impact of VAT within the project implemented by the two entities, by applying two scenarios: the optimistic scenario whereby the expenditures included in the budget of the project are carried out in full and the reimbursement thereof by the managing authority is 100% executed, and the pessimistic scenario by which the execution of the budget in full is reimbursed only at a rate of 80%.

In order to carry out the above mentioned analysis, I have used as input data, the funding contract signed by an NGO with the Western Region Intermediate Body on 30.04.2014, for implementation of a project within priority axis 6 "Promoting social inclusion", key area of intervention 6.3 "Promoting equal opportunities on the labour market".

Table 3.2 - Financial data of the funding contract

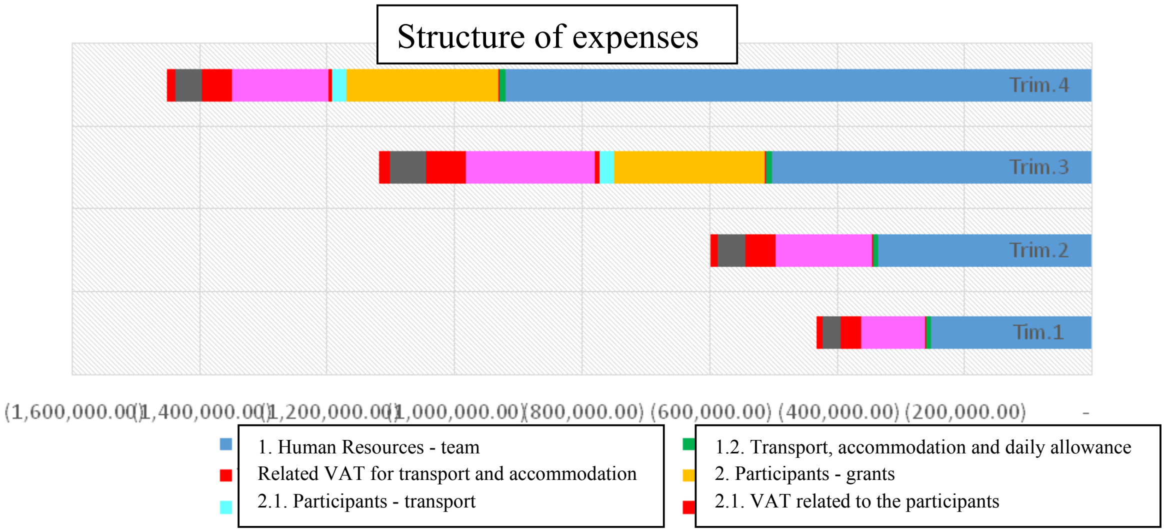
	total eligible project value	the value of non-refundable funding from the ESF (*European Social Fund*)		the non-refundable value from the SB (*State Budget*)		the contribution of the Beneficiary	
Project value	9,758,370.00	8,490,124.64	88.78 %	1,072,980.38	11.22 %	195,264.98	2 %
Of which:							
Beneficiary – NGO	3,598,140.00	3,130,508.17	88.78 %	395,633.04	11.22 %	71,962.80	2 %

Source: the funding contract of the beneficiary

For comparability purposes and to identify the difference between the implications on the cash-flow of the two taxable and non-taxable legal persons, I have carried out the analysis by using the financial data of the project implemented by the NGO and the scenario in which it would be implemented by a person registered for VAT purposes. I have also used the same data of the project for the costs without VAT, so as to be able to capture the impact of the VAT and the final cost to be borne by the two types of legal persons in this matter.

The main characteristic features of the projects funded by SOP HRD, priority axis 6, "Promoting social inclusion", taken into account in the analysis are the following:

- the implementation period is of 12 months;
- the funding from non-refundable funds is at 98% and the difference of 2% of the project value is co-financed by the beneficiary;
- pre-financing in the amount of 20% of the total value of the project approved under the financing agreement, that is to be granted in two instalments;
- reimbursement of eligible expenses incurred by the beneficiary within 45 days;
- quarterly distribution of expenses incurred with the project, by registering thereof at the time of submitting the application for reimbursement;
- I have estimated the expenditure throughout the year based on the schedule of project activities, as follows:



Results of the analysis

In the case of project implementation via SOP HRD before 2012, the project value without VAT is of RON 3.335.162,40, the related value added tax is estimated at the amount of RON 262.977,60 and the amount co-financed by the beneficiary is of RON 66.703,25 (2% of the amount without VAT).

The NGO beneficiary shall register a project implementation cost of 2% in the case of the optimistic scenario of a 100% refund of expenses by the managing authority, not exceeding the co-financed amount provided in the agreement. However, if the NGO shall choose to obtain funding via a bank loan with repayment of the principal and interest of 10% at the end of the loan period, then the actual cost incurred by the beneficiary shall be of 2,95%, i.e. the amount co-financed by the beneficiary of RON 66.703,25 and the interest related to the loan needed to cover the related expenses and VAT.

In the case of the pessimistic scenario of reimbursement at a rate of 80% of the costs requested by the NGO through the applications for reimbursement, it can be noticed that the beneficiary will impair its cash flow during the year of project implementation with the amount of RON 639.584,10 representing

Table 1.1 Co-financing situation of the project - NGO - ineligible VAT

NGO					
project value - RON 3.335.162.4,00		100% reimbursement		80% reimbursement	
ineligible nondeductible VAT	co-financing by the beneficiary under the agreement	66,703.25	2%	66,703.25	2%
	the actual co-financing at the end of the project - unleveraged	66,703.25	2%	639,584.10	19.18%
	the actual co-financing at the end of the project - leveraged	98,421.14	2.95%	678,587.08	20.35%

the co-financing of 2%, expenses in the amount of RON 520.285,33 that have not been reimbursed and nondeductible VAT in the amount of RON 66.703,25. So that the incidence of the failure to fully reimburse the expenditure incurred with the project will represent for the beneficiary a final cost of 19.18% of the project value, if for covering the funding requirements are used own sources or financing from shareholders/associates. In the hypothesis in which the NGO will have to contract a loan at an interest of 10%, then the impact of the expenditures related to the project on its cash flow will be of 20,35%.

Unlike the beneficiaries who are non-taxable persons and who could, under GEO no. 64/2009, recover the corresponding nondeductible VAT on eligible expenses, the commercial companies that have the status of professional training providers and carry out activities both exempted from VAT, without the right to deduction, and taxable operations, have registered another level of VAT implications on their cash flow. So, starting from the same financial data of the project, the LLC (*limited liability company*) during 2007-2012 did not have the possibility to receive a VAT refund on the related expenses, thus representing a final cost, since the nondeductibility thereof derives from the fact that the purpose of such expenditures is to provide services to the target group for which the financing agreement was concluded, services that are not paid by such group, therefore the projects are not meant to generate revenue.

Table 1.2 Co-financing situation of the project - LLC - ineligible VAT

LLC					
project value - RON 3.335.162.4,00		100% reimbursement		80% reimbursement	
ineligible nondeductible VAT	co-financing by the beneficiary under the agreement	66,703.25	2%	66,703.25	2%
	the actual co-financing at the end of the project - unleveraged	329,680.85	9.89%	849,966.18	25.49%
	the actual co-financing at the end of the project - leveraged	365,947.03	10.97%	892,607.79	26.76%

Therefore, compared to the costs incurred by the NGO, in the case of a full reimbursement of expenses, the LLC shall bear from its own funds, until the end of the implementation period, a total cost of RON 329.680,85, representing its own contribution in the amount of RON 66.703,25, as provided in the financing agreement, as well as the expenses with nondeductible VAT related to eligible expenses in the amount of RON 262.977,60, assuming that such expenses are to be 100% reimbursed.

In the case of the beneficiary who is organised as a LLC, the project implementation under optimum conditions, without contracting other funding sources, also shows a negative cash flow for the most part of the year. So, in order to make the necessary payments to carry out the project under good conditions up to the receipt of the second instalment of pre-financing and the reimbursement of expenses by the MA, the beneficiary shall either use the funds intended for other activities or it shall receive funding from its associates. If the LLC is financed from bank loans, the expenses incurred will be higher compared to those of the NGO, since the LLC will also fund the VAT over three periods, thus the total expenses for implementing the project will be of RON 365.947,03, of which RON 262.977,60 representing nondeductible and non-reimbursable VAT, and RON 36.266,19 representing interest for the amounts borrowed from the bank. Thus, in this situation, the implications of VAT financing and accumulation will ultimately lead to a level of co-financing the project of 10.97% compared to the 2% according to the agreement.

In the pessimistic scenario, the reimbursement for 80% of expenditure incurred during the four reporting periods, will represent the final cost for the LLC, in the amount of RON 849.966,18, i.e. 25.49% of the project value, accounting for VAT on expenses in the amount of RON 262.977,60 that cannot be deducted, and the LLC must register as a definitive cost the reimbursed expenses in the amount of RON 520.285,33. As we can see from the table above, the total cost of the LLC is of 25.49%.

If the LLC is funded from interest-bearing sources, then it will also bear the interest expenses in the amount of RON 42.641,61, which are higher than those paid by the NGO, as in this case, the beneficiary borrows money to finance the nondeductible VAT as well.

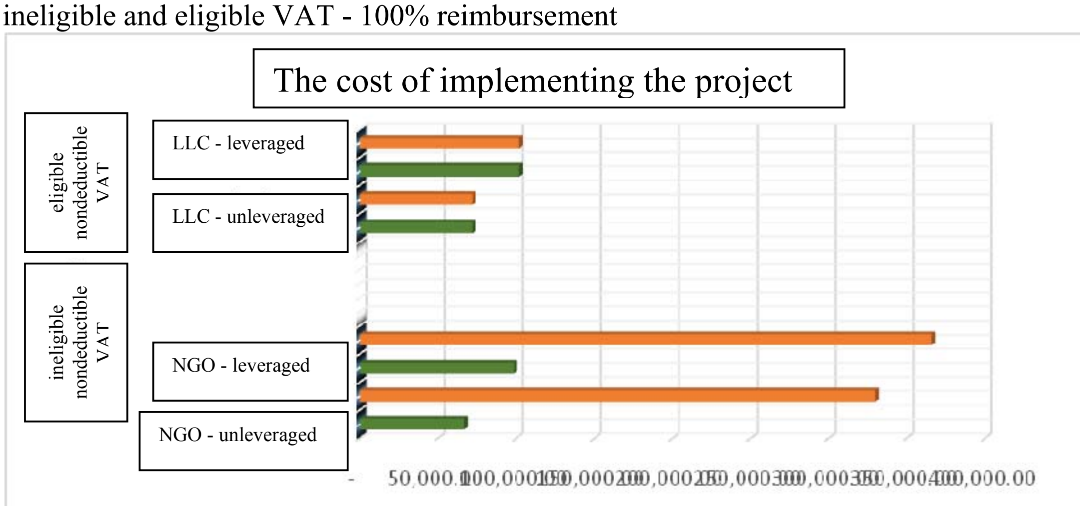
Compared with the situation registered in the period in which the nondeductible VAT was not eligible, in the period after 2012, the eligibility of VAT shows another situation of the costs incurred by beneficiaries. So, in this situation, the VAT treatment for beneficiaries is similar, since the cost of project implementation is the same in both scenarios.

Table 1.3 Co-financing situation of the project - NGO, LLC - eligible VAT

		LLC, NGO			
project value - RON 3.598.140,00		100% reimbursement		80% reimbursement	
eligible nondeductible VAT	co-financing by the beneficiary under the agreement	71,962.80	2%	71,962.80	2%
	the actual co-financing at the end of the project - unleveraged	71,962.80	2%	633,272.64	17.60%
	the actual co-financing at the end of the project - leveraged	102,016.66	2.84%	670,411.46	18.83%

Thus, regardless of the status of the person implementing the project, the cost of the project will be of RON 71.962,80, representing the 2% co-financing (including the VAT co-financing). In case of failure to fully reimburse the expenses, the cost incurred by the beneficiaries will be of RON 633.272,64, representing the 2% co-financing plus the ineligible expenditure amounting to RON 520.285,33 and the nondeductible VAT that was not recovered from the non-refundable funds, in the amount of RON 41.024,51.

Chart 1.1 - Comparison between the cash flow situation of an NGO and LLC project - ineligible and eligible VAT - 100% reimbursement



After analysing the impact of nondeductible VAT relating to expenditure incurred with the project, we may conclude that in the case of the NGO, the eligibility of nondeductible VAT is an additional cost, because it needs to also co-finance, starting from 2012, the estimated VAT amount related to taxable expenses. As we can see from the table summarizing the results of the analysis, the costs which the beneficiary will bear with project implementation, as a total share of the project value, are lower in the case where nondeductible VAT is eligible. But as an absolute value, the beneficiary will incur higher expenses, as a result of co-financing the VAT.

In the case of LLC beneficiaries, for the same value of the project, they will incur a total cost significantly lower compared to the period in which VAT was not eligible, due to the reimbursement of VAT.

CONCLUSIONS AND PROPOSALS

The cash flow of a company is affected in terms of VAT by several specific elements of the system, namely: the nature of the operations it carries out, the status of a person within the scope of VAT, the right to deduction, VAT chargeability time, the tax period, etc. Even if the financial implications of VAT are temporary, there may be serious consequences for the businesses' continuity.

The same impairment of cash flow in terms of VAT can be also seen in the case of legal persons implementing projects funded by SOP HRD. The problems arise from the tax treatment of VAT on purchases made for the implementation of the projects. Thus, the nondeductibility of VAT is regarded as an impediment to the involvement of a larger number of beneficiaries and for the increase of the absorption rate of non-refundable funds.

Compared to the period in which the nondeductible VAT was not eligible, the situation of the beneficiaries registered for VAT purposes has considerably improved in terms of the financial implications. Thus, the beneficiaries are currently responsible for co-financing VAT amounts proportionate to the estimated total value of the project.

However, as the analysis mentioned, the level of co-financing undertaken via the financing agreement, most often is not complied with, and the beneficiaries are forced to bear a high level of co-financing resulting from the deficiencies of the programme's financial mechanism. On the one hand, they must bear a large part of the ineligible costs from their own funds, which normally would have had to be financed from non-refundable funds, and on the other hand, they have to register as a definitive expense the nondeductible VAT that was not reimbursed to them.

The lower the reimbursement rate of the expenditures is, the more beneficiaries are forced to finance a higher percentage of the project they are implementing. The effects of this situation are multiple; on the one hand, the beneficiaries are affected in terms of cash flow, very often being forced to obtain funding from bank loans, and on the other hand, they lose confidence in the programme and refuse to implement projects financed via the operational programme.

Therefore, I believe that the financial mechanism of implementing projects funded by SOP HRD shows a multitude of problems, with serious effects on the cash flow of the beneficiaries, on the one hand, by an insufficient pre-financing, increased debts, delayed collection of VAT, financial corrections applied.

In terms of the pre-financing matter, I believe that the pre-financing amount should be high enough so that the beneficiaries would not require funding from the first months of the project's implementation and it would allow them to prepare their project cash flow. Also, the reimbursement thereof should be made at the end of the project, via the last applications for reimbursement.

Accelerating the duration of reimbursement of expenses by making payments to beneficiaries without validating such expenses, and subsequently, if identifying ineligible expenses, performing corrections on the next application for reimbursement.

In terms of VAT, the reimbursement thereof should be made together with the expenses claimed, without the need to submit the affidavit regarding the VAT nondeductibility certified by the tax authority, so that the standby time to be as short as possible, with a limited impact on the company's cash flow.

The measures to be taken first of all by the authorities responsible for overseeing the implementation of the projects refer to reducing bureaucracy, simplifying the applicable legislation, supporting the beneficiaries by providing permanent advice and, secondly, by beneficiaries, by seriously committing to the implementation of the projects and identifying from the start the instruments to improve the cash flow until the end of the projects.

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