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ANTI-EVASION PROVISIONS APPLICABLE TO VALUE-ADDED TAX IN THE REPUBLIC OF SERBIA[**]

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Abstract: *Value-Added Tax (VAT) constitutes the largest share of total tax revenue collected in Serbia. Due to the high VAT rate and the credit-invoice method, where a taxpayer can offset input VAT against output VAT, VAT is highly vulnerable to tax evasion/fraud schemes. This paper analyzes two domestic anti-evasion rules applicable to VAT. The Serbian Value-Added Tax Act contains reverse charge provisions designed to prevent potential tax evasion. In situations not covered by these provisions, Serbian tax procedure law includes a measure that tax authorities could implement to collect unpaid taxes, including VAT. This is the secondary tax liability provision. The main aim of the paper is to highlight the issues that arise from the application of these anti-evasion measures. Based on the hypothesis that domestic measures are not sufficiently effective in curbing evasion, and that solutions provided by EU legislation should be considered, the author uses the normative-dogmatic and content analysis methods, with particular reference to the case law of the Court of Justice*

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of the European Union, as well as comparative method to provide recommendations to the Serbian legislator to ensure legal certainty and effective VAT collection.

Key words: *value-added tax, tax evasion, reverse charge mechanism, joint tax liability, secondary tax liability, VAT Directive 2006/112.*

1. Introduction

Based on the Stabilization and Association Agreement[1] that Serbia entered into in 2013, there is a need for further harmonisation of Serbian tax laws with the EU legislation. In addition, the Accession report for the year 2023 (Commission Staff Working Document, SWD (2023) 695 final, 115) states that Serbia is expected to further harmonise its domestic VAT legislation with the EU VAT legislation. As the VAT is one of the taxes most exposed to evasion/fraud, it is important for Serbia to use measures to suppress tax evasion/fraud effectively. The author will consider two measures that could be used in this regard. The analysis will show that the broadening of the scope and the further clarification of some measures in domestic laws are needed in order to combat tax evasion/fraud more successfully.

Regarding the EU VAT legislation, the VAT Directive (2006/112)[2] encourages the Member States to implement the reverse charge mechanism with characteristics of an anti-evasion/fraud rule for the supplies of specific goods and services.[3] The reverse charging means that, if a supply is subject to reverse charge, the tax liability in business-to-business transactions is shifted from the seller to the buyer (Buettner, Tassi, 2023: 850). Under the reverse charge mechanism, the obligation of calculation and payment of VAT is transferred to the person to whom supplies of goods and services are made, if that person is a taxable person under the law that regulates VAT, and if that person has the right to deduct input VAT from the VAT which they are liable to pay (Milošević, 2014: 214; Terra, Kajus, 2024: 746). The reason for applying the reverse charge is the high probability of tax evasion with those specific supplies, since they could

1 Sporazum o stabilizaciji i pridruživanju (SSP) izmedju EU i Republike Srbije (Stabilization and Association Agreement between EU and Serbia), Retrieved on 20 May 2025 from: https://www.mei.gov.rs/upload/documents/sporazumi_sa_eu/ssp_prevod_sa_anexima.pdf

2 Articles 199 and 199a. Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax, OJ L347, 2006. (hereinafter: Council Directive 2006/112/EC)

3 Introduction, paragraphs 1 and 2. Council Directive (EU) 2022/890 of 3 June 2022 amending Directive 2006/112/EC as regards the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud, OJ L 155, 2022. (hereinafter: Council Directive (EU) 2022/890)

generate high revenue[4] or because the tax administration cannot control the full supply chain[5]. The VAT Directive (2006/112) further allows Member States to employ a 'quick reaction' reverse charge mechanism as a special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses. In contrast, the Serbian Value-added Tax Act[6] does not provide for the possibility of a 'quick reaction' reverse charge mechanism. The reverse charge mechanism in Serbia is applicable to the specific supplies similar to those prescribed in Articles 199 and 199a of the VAT Directive (2006/112) but the implementation is not complete. With the reverse charge mechanism applicable to supplies of goods and services, it is less likely that VAT would remain unpaid. The reverse charge mechanism is also indicated by taxpayers on invoices, and its application does not require the tax authorities to conduct an additional assessment for potential tax evasion/fraud, unless a subsequent tax audit is initiated. Having in mind that Serbia is an EU candidate country, and that legal norms should be harmonised, we will elaborate how to improve domestic reverse charging.

If the VAT ends up uncollected due to tax evasion, the Tax Procedure and Tax Administration Act[7] stipulates one measure which could be used as a means to recover unpaid tax in the field of VAT. While the reverse charge provision is used as a kind of special measure to suppress possible tax-evasion/fraud situations, and is applied by a taxpayer, the secondary tax liability provision serves as a tool to restore the VAT unpaid due to tax evasion/fraud schemes, and is applicable by the tax authorities in the tax procedures and audit.

The paper's aims are twofold:

- to set out recommendations to the Serbian legislator on how to provide a precise and clear definition of the secondary tax liability provision based on the solutions provided by the VAT Directive (2006/112) and the case law of the Court of Justice of the European Union on that matter, or enact a new joint tax liability provision in the VAT Act regardless of the current secondary tax liability provision;
- to set out recommendations to the Serbian legislator on how to temporarily broaden the scope of the reverse charge mechanism only

4 Such as the supply of immovable property, precious metals, etc.

5 The best examples are the scrap, industrial and non-industrial waste, recyclable waste, etc. In these cases, it could be quite hard to track the full chain of supply.

6 Value-added Tax Act, *Official Gazette RS*, 84/04, 86/04, 61/05, 61/07, 93/12, 108/13, 68/14, 142/14, 83/15, 108/16, 113/17, 30/18, 72/19, 153/20, 138/22, 94/24. (hereinafter: VAT Act).

7 Articles 9 and 31 § 2 of the Tax Procedure and Tax Administration Act, *Official Gazette RS*, 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 112/15, 15/16, 108/16, 30/18, 95/18, 86/19, 144/20, 96/21, 138/22, 94/24 (hereinafter: TPTA Act)

for specific supplies of goods and services needed to combat sudden and/or massive evasion/fraud.

Thus, the recovery of unpaid VAT and the suppression of potential tax evasion/fraud would be more effective.

In this article, the author first clarifies to what extent the Serbian reverse charge provision can be used to suppress possible VAT evasion/fraud, and the scope of that provision in Serbia. Then, the author examines the effect of the secondary tax liability and joint tax liability provision in the VAT domain. Finally, the author concludes that the Serbian legislator should potentially adopt the solutions provided by the EU VAT Directive (2006/112) in order to ensure legal certainty and effective tax collection.

2. Tax evasion, fraud and avoidance

As tax avoidance and evasion terms will be used in the following sections, it is necessary to establish distinction between them (Kostić, Pavlović, 2020, 141-142; Živković, 2022: 371). *Tax avoidance* is the term that includes taking advantage of poorly constructed legislative provisions in domestic law, exploiting mismatches that arise from the interaction of two or more tax systems, or exploiting the benefits of favourable tax treaties (Bergedahl, 2018: 11). Civil law countries usually use the term "abuse" for tax avoidance, i.e. the arrangements that do not constitute tax crimes (Greggi, 2008: 24). One of the most complete definitions of tax abuse (avoidance) can be found in the case law of the Court of Justice of the European Union (hereinafter: CJEU). It should be noted that the CJEU views tax avoidance as an autonomous concept under EU law; hence, as far as cross-border movement within the scope of EU law is concerned, the Member States cannot rely on their domestic definitions of tax avoidance (Lazarov, 2018: 90). According to a consistent line of case law[8], what constitutes an abusive practice is the creation of a wholly artificial arrangement that does not reflect economic reality and the purpose of which is to obtain an unintended tax benefit (Lazarov, 2018: 90).

Broadly speaking, *tax evasion* includes the behaviour of taxpayers that is against the law (Gomes, 2019: 69). Perhaps the clearest explanation and differentiation may be found in a paper issued by the Internal Revenue Service (IRS) of the United States of America, where tax evasion is designated as the failure to pay or a deliberate underpayment of taxes, while tax avoidance means an action undertaken to lessen tax liability and maximize after-tax income.[9]

8 See for example: Case C-6/16, *Eqiom and Enka*, [2017], § 30; Case C-504/16, *Deister Holding*, [2017], § 60.

9 IRS (n.d.) Understanding Taxes (Lesson 1: Why pay taxes; Worksheet: The Difference Between Tax Avoidance and Tax Evasion, p. 1), Internal Revenue Service (online), Washington

Tax evasion can be defined as the deliberate omission, concealment, or misrepresentation of information to reduce VAT liability (de la Feria. 2020: 245). On the other hand, organized fraud involves coordinated and systematic actions, with varying levels of sophistication and organization, directed at obtaining an unlawful VAT financial advantage (de la Feria. 2020: 245). Regarding VAT, the most well-known type of evasion/fraud includes the missing trader companies. The missing trader's conceals the entire or part of the turnover in order to underestimate the VAT base and to pay less, or not to pay the full value of the liability towards the national treasury. The missing trader disappears after a relatively short period by closing, abandoning or bankrupting the business (Frunza, 2020: 4). The design of a VAT with the ability to credit the input VAT against the output VAT can significantly impact its exposure to evasion (Smith, Keen, 2007: 10). This section should note that Serbian law recognizes tax fraud as a criminal offense for all types of taxes[10], and provides for a specific tax fraud offense related to VAT[11], but does not define the term "tax avoidance".

The VAT has the largest share of total tax revenue collected in Serbia. For example, during the 2020-2022 period, VAT accounted for approximately 25% of the total tax revenue collected (Ministarstvo finansija RS, 2023*:* 37-38). Due to the high VAT rate and the credit-invoice method, which allows taxpayers to offset input VAT against output VAT, the VAT system is particularly vulnerable to tax evasion/fraud schemes. Given that VAT typically represents 20% of the value of a single supply, this can amount to a significant sum, especially in high-value transactions, making it particularly tempting for taxpayers to attempt evasion, more than with other types of taxes. In the next section, we examine which anti-evasion provisions could be used by Serbia to suppress VAT evasion/fraud schemes, and the effect of those provisions.

3. Reverse charge mechanism

Despite the uncertainty regarding the magnitude of revenue losses, EU Member States have implemented various measures to combat VAT evasion/fraud. The key measure used in the EU is the application of the so-called reverse charge mechanism (Buettner, Tassi, 2023: 850). If some good is subject to reverse charge, the tax liability in business-to-business transactions is shifted from the seller to the buyer. Since the seller can no longer charge VAT and disappear without remittance, the reverse charge effectively erases the possibility

D.C., USA; accessed on 3 April 2025 from https://apps.irs.gov/app/understandingTaxes/whys/thm01/les03/media/ws_ans_thm01_les03.pdf

10 Article 225 of the Criminal Code, *Official Gazette RS*, 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19. (hereinafter: Criminal Code RS)

11 Article 173a of the Tax Procedure and Tax Administration Act (TPTA Act).

of a missing trader tax fraud to occur (Buettner, Tassi, 2023: 850). Under the reverse charge mechanism, the obligation of calculation and payment of VAT is transferred to the person to whom supplies of goods and services are made, if that person is a taxable person in accordance with the law that regulates VAT, and if that person has the right to deduct input VAT from the VAT which they are liable to pay (Milošević, 2014: 214; Terra, Kajus, 2024: 746). The inclusion of a reference[12] to reverse charge is mandatory in the invoice with a price VAT excluded (Hummel, 2024: 60-61). When reverse charge is applied, input VAT is then deducted in that same VAT return and, insofar as this person has a full right of deduction, the result is nil.[13] The reverse charge mechanism could be understood as an anti-evasion/fraud tool applicable to the specific supplies of goods and services, without a case-by-case questioning of the potential evasion character of a transaction by the tax authorities, as it is applied by taxpayers. The result is that the reverse charge mechanism suppresses the potential tax evasion/fraud, as the supplier does not get access to their output VAT amount.

The VAT Act states that a taxable person shall be a person, including a person without a head office in the Republic of Serbia or permanent residence, independently engaged in the supply of goods and services, within the framework of their activity.[14] The VAT Act further states that a taxable person, the supplier, is required to calculate VAT, include VAT in their invoices, file periodic tax returns, and is liable to pay the VAT to the State.[15] However, the VAT Act contains a deviation from the general liability rule. In special cases, the obligation to calculate and pay VAT to the State is transferred to the purchaser of goods or services. In such cases, the supplier does not charge VAT, and a reference to the reverse charge mechanism must be included in the invoice.[16]

Regarding domestic transactions, the types of specific supplies where the reverse charge mechanism is applicable in the VAT Act are influenced by Articles 199 and 199a of the VAT Council Directive (2006/112) which provide a wider range of supplies where the reverse charge may apply to suppress possible

12 According to the CJEU judgments, the reference in an invoice is a must: Case C-247/21, *Luxury Trust Automobil GmbH v Finanzamt Österreich*, [2022].

13 Sec. 1. Proposal for a Council Directive amending Directive 2006/112/EC as regards the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud, COM (2022) 39 final.

14 Article 8 of the VAT Act.

15 Article 37 § 1, subparagraph 4, and Article 42 § 4, subparagraph 8 of the VAT Act.

16 Article 42 § 4, subparagraph 9, and Article 49 § 1, subparagraph 6 of the VAT Act.

tax evasion.[17] Article 199a of the VAT Directive encompasses items[18] that can be used to evade VAT, specifically, the products with high value that can generate significant losses to tax offices and those with low volume, which require low cost of storage and transportation (Frunza, 2020: 15). Article 199a of the VAT Directive includes items such as mobile telephones, microprocessors, game consoles, tablet PCs and laptops, precious metals and so forth. Serbia did not implement the reverse charge mechanism for most of the supplies mentioned in Articles 199 and 199a of the VAT Directive (2006/112) for the suppression of tax evasion. Perhaps Serbian tax authorities did not find tax evasion/fraud to create heavy VAT losses in specific fields of industry mentioned in the VAT Directive, as was the case with some EU Member States. For example, in 2010, in Germany, the reverse charge mechanism was extended to trade with certificates under the EU emission trading system, after major cases of missing-trader frauds were detected, with a revenue loss of 5 billion euro (Buettner, Tassi, 2023: 857).

Currently, the author identifies three main reasons why the Serbian tax legislator should refrain from adopting the broader application of the reverse charge mechanism as permitted under Article 199a of the VAT Directive and choose to implement Article 199b instead. Firstly, the Serbian Tax Administration remains understaffed and lacks a fully developed IT infrastructure, which is an issue highlighted as one of the key concerns in the European Commission's 2024 Report on Serbia (Commission Staff Working Document: Serbia 2024 Report SWD (2024) 695 final, 13 and 52). Although numerous vacancies have been announced on the Tax Administration's website,[19] until optimal staff level is achieved, introducing additional legislative measures, particularly those that may involve costly audits or complex tracking of an increased number of invoices with reverse charge references, would be premature.

Secondly, the reverse charge does not align with the basic VAT principle of fiscal neutrality. This means that, for example, in a supply chain with 20 taxable transactions, each taxable person, assuming they have full deduction rights, will only be liable for the portion of VAT corresponding to the value added. As a result, a state collects VAT in portions at each stage of the chain (Amand, 2013: 169). This is the main reason why reverse charging was not envisaged as a permanent but rather as a temporary solution to suppress VAT evasion/fraud, and the application is limited in the VAT Directive (112/2006). Serbia should not excessively broaden reverse charging, or else, the basic principle will deviate from its original form.

17 Articles 199 and 199a of Council Directive 2006/112/EC.

18 The term 'item' covers both goods and services that can be used in the course of supply between taxpayers.

19 Ministarstvo finansija, Poreska uprava (n.d.). Konkursi, accessed on 12 July 2025, https://www.purs.gov.rs/aktuelnosti/Konkursi/konkursi.html

Thirdly, imposing additional administrative burdens on taxpayers is unwarranted if the Tax Administration's own data indicates no significant level of tax evasion/fraud in specific sectors, such as the supply of laptops, personal computers, or gaming consoles. To minimize administrative burdens, the Serbian legislator could instead consider introducing a targeted and specific reverse charge provision, aligned with EU legislation, that would apply only to sectors or transactions where widespread evasion/fraud has been identified. Such a time-bound and supply-specific measure would ease the compliance burden for both the Tax Administration and taxpayers.

The VAT Directive (2006/112) gives the EU Member States a possibility where a Member State may designate, in cases of imperative urgency, the recipient as the person liable to pay VAT on specific supplies of goods and services by derogation from Article 193, as a Quick Reaction Mechanism (hereinafter: QRM) special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.[20] The Council of the European Union has adopted the VAT Directive (2022/890), amending Directive 2006/112/EC, as regards the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud, where the application period has been extended until the end of 2026.[21] On the other hand, the Serbian VAT Act stipulates that the reverse charge mechanism can be applied only to certain supplies of goods and services,[22] without the possibility of implementing any kind of a 'quick reaction' reverse charge mechanism provided in the VAT Directive (2006/112). If successfully implemented, this measure would allow the Serbian Tax Administration to focus on specific industries, sectors, or types of supplies where large-scale evasion/fraud occurs, and to apply the reverse charge mechanism for a limited period. During this time, the Tax Administration could work to reduce evasion/fraud rates while continuing to hire more personnel. In doing so, only targeted transactions would be subject to closer monitoring, minimizing the Tax Administration costs, while the shift in administrative burden for taxpayers would be felt only within a defined, high-risk segment of the market.

As for the supplies of goods and services not explicitly mentioned in the VAT Act, and where the reverse charge is not applicable, if the VAT is unpaid due to tax evasion/fraud, the tax administration could use domestic secondary tax liability provision as an anti-evasion rule to collect the unpaid VAT in the tax proceedings. This is discussed in section 4.

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20 Article 199b of the Council Directive 2006/112/EC.

21 Articles 1 and 2 of the Council Directive (EU) 2022/890.

22 Article 10 of the VAT Act.

4. Secondary tax liability in Serbian tax law

The secondary tax liability provision is contained in Article 31 of the Tax Procedure and Tax Administration Act, and it is applicable to persons contributing to or assisting in the avoidance of tax which another person is liable to pay – for the amount of tax payment avoided by the other person.[23] In most cases, the domestic tax laws does not provide the definitions of categories, such as tax avoidance and tax evasion/fraud and their differences (Živković, 2023: 14). Serbia might be a good example of states where the secondary tax liability provision contains the phrase "tax avoidance" but does not clarify its meaning. Moreover, until 1 January 2006, the TPTA Act included a provision on a criminal offense titled "the avoidance of tax payment" [24].[25] After January 2006, this criminal offense was no longer part of the TPTA Act; it became part of the Serbian Criminal Cod and was designated as "Tax evasion".[26] Ilić-Popov is of the opinion that the offence should be designated as "Tax fraud" considering that the taxable person gives false information on income earned, objects and other facts relevant for determining such liabilities, and fails to report the income earned, objects or other facts relevant for determining such liabilities (Ilić-Popov, 2016: 41, ft. 2). To make the confusion even greater, the translation of the Serbian Criminal Code (2019) into English, posted on the official website of the Ministry of Justice of Serbia, uses the term „Tax avoidance"[27], while the literal translation of the term would be tax fraud.

The issue concerns whether this secondary tax liability provision should be applied solely in cases of tax avoidance, based on a literal interpretation, or also in cases of tax evasion. To answer this question, we should examine a similar provision in comparative tax law - the German Fiscal Code, which had an influence on the Serbian legislator when drafting the TPTA Act back in 2002. In the Fiscal Code of Germany, it is stated that any person who evades taxes or receives, holds or sells goods obtained by tax evasion or participates in such an act shall be liable for the taxes understated, the tax advantages wrongfully

23 Article 31 § 2, subparagraph 2 of the TPTA Act.

24 Article 172 of the TPTA Act.

25 This is the literal translation of the Serbian term: *izbegavanje plaćanja poreza*. Yet, the official translation provided on the website of the Tax Administration of Serbia is tax evasion, which does not correspond to the literal translation, *See:* Ministarstvo finansija RS, Poreska uprava (2024), accessed on 24 October 2024, https://www.purs.gov.rs/lat/fizicka-lica/pregled-propisa/zakoni/7773/zakon-o-poreskom-postupku-i-poreskoj-administraciji.html

26 Article 225 of the Criminal Code RS.

27 Article 225 of the Criminal Code RS (2019), retrieved on 20 April 2025 from https://www.mpravde.gov.rs/files/Criminal%20%20%20Code_2019.pdf

granted and the interest due on evaded taxes.[28] The German Fiscal Code uses this provision to extend the tax liability not only to tax evaders but also to all persons participating in a tax evasion scheme. This is clearly different from the Serbian word "avoidance of tax payment". Yet, considering that the Serbian legislator was not clear enough on the difference between tax avoidance and evasion, and that the Serbian TPTA Act leans on the German Fiscal Code, the author is of the opinion that domestic secondary tax liability provision could be used to collect VAT unpaid due to tax evasion. As this provision lacks clarity, it would be wise for the Serbian legislator to amend it. This would establish legal certainty, and taxpayers would know what to expect from the application of the aforesaid provision.

Secondary tax liability has an effect on various kinds of taxes, not just on the VAT. On the other hand, Serbian provisions that regulate VAT do not contain anti-evasion measure, such as the joint tax liability provision which exists in the European legislation, and the mentioned provision is very similar to the domestic secondary tax liability provision. In the next section, we will examine the difference between the two norms and provide a recommendation for Serbian legislators.

5. Joint tax liability

The joint tax liability provision can be found in Article 205 of the VAT Directive (2006/112), where Member States may provide that a person other than the person liable for VAT payment is to be held jointly and severally liable for payment of VAT.[29] More detailed guidance is provided in the case law of the CJEU. In May 2006, the CJEU rendered a decision providing that a taxable person to whom a supply of goods or services has been made and who knew, or had reasonable grounds to suspect, that some or all of the VAT payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person who is liable, for the payment of that tax.[30] All EU Member States follow the same reasoning of the VAT Directive and the CJEU.[31]

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28 Article 71 of the Fiscal Code of Germany, promulgated on 1 October 2002, *Federal Law Gazette* [Bundesgesetzblatt], I p. 3866; 2003 I p. 61, last amended by Article 17 of the Act of 17 July 2017 (*Federal Law Gazette* I p. 2541) (hereinafter: German Fiscal Code), accessible at: https://www.gesetze-im-internet.de/ao_1977

29 Article 205 of the Council Directive 2006/112/EC.

30 Case C-384/04, *Commissioners of Customs & Excise and Attorney General v Federation of Technological Industries and Others*, [2006], paragraph 1.

31 For the scope of the implementation of the Article 205 of the VAT Directive (2006/112) in all Member States, see: Annacondia, 2022: 973-977.

The secondary tax liability and joint tax liability provisions share similarities to some extent. Firstly, the secondary tax liability provision in Serbia and the joint tax liability in the EU have the same effect of collecting unpaid VAT from a person who was not initially liable for the payment of VAT. Secondly, both measures have penalizing effect and possible double taxation. For example, if a missing trader company does not pay VAT, and a participant in the transaction chain knew or should have known that the missing trader company intended not pay VAT, and the only purpose of the transaction was to legalise a good from the black market, a participant, who previously paid a share of the VAT they owed, now with the application of the mentioned measures would have to pay VAT unpaid by the missing trader as well, which has the penalizing effect. Thirdly, both measures have a subjective element. Regarding the subjective element, the Serbian legislator was not clear enough on how to determine if a person is contributing to or assisting in the avoidance of the tax which the other person is liable to pay. Simply put, it remains uncertain which objective facts and circumstances could establish the presence of the subjective element because a secondary act on this matter does not exist. Furthermore, the domestic provision does not state specifically if the provision is applicable to any previous or subsequent supply of goods or services. As stated earlier, this is probably because the Serbian legislator wanted to make this provision available to all taxes, not just to VAT. In contrast, it is much clearer in the VAT legislation of the EU Member States which transactions in the supply chain are covered by the joint tax liability provision (Annacondia, 2022: 973-977). The CJEU also provided a clear definition of how objective facts and circumstances give rise to the subjective element (i.e., knew or ought to have known or been aware). In addition, some Member States, such as the Czech Republic and Slovakia, even defined in their VAT laws which specific objective facts and circumstances can lead to establishing the subjective element (Annacondia, 2022: 973-977). If those objective circumstances were to exist, the subjective element would be satisfied.

As the secondary tax liability would require further clarification, and is intended to be used as an anti-evasion means for various kinds of taxes, it is highly recommendable for the Serbian legislator to implement joint tax liability provision and make it available exclusively in the law that regulates VAT, regardless of the existence of the secondary tax liability provision as it stands in the TPTA Act. Article 205 of the VAT Directive (2006/112), national provisions of EU Member States that implemented the given article, as well as the CJEU decisions on joint tax liability provision, could be used to help the Serbian legislator to enact a precise rule within the VAT Act. The domestic definition of the secondary tax liability provision, as it currently stands in the Serbian tax procedure statute, is not a reliable means to combat tax evasion as

it lacks clarity. It is probably the reason why the tax authorities in Serbia, to the author's knowledge, have not relied on that legal provision thus far in the field of VAT. Alternatively, since both measures have the same goal and effect, and include the same subjective element, the Serbian Ministry of Finance could issue an opinion where the secondary tax liability, for the VAT domain only, could be interpreted in light of the joint tax liability provision as it is used in the EU. This is easier to do, but legal certainty would not be fully established as the opinions are only mandatory for the Tax Administration, and it is possible to have two different opinions for the same factual situation[32].

6. Conclusion

The reverse charge mechanism is a measure that suppresses the potential tax evasion. As the reverse charge is not applicable to all supplies of goods and services, criminal offenders can evade VAT by using items that the reverse charge mechanism does not cover. If the VAT is unpaid due to tax evasion, the domestic secondary tax liability provision could be used by the tax administration to collect the VAT unpaid in the tax procedures with the penalizing effect.

What the author recommends for the Republic of Serbia is the enactment of a 'quick reaction' reverse charge mechanism provided in the VAT Directive (2006/112). Therefore, in case of massive fraud and huge tax loss, Serbian authorities could prevent tax fraud in the field of specific industries in the future. Having in mind the possible administrative burden and the understaffed Serbian Tax Administration, prevention is a better interim solution than simply broadening the reverse charge provision to the supplies of goods and services mentioned in Article 199a of the VAT Directive (2006/112). The author also recommends the enactment of a new joint tax liability provision in the VAT Act, regardless of the existence of the secondary tax liability provision. Alternatively, having in mind the comparable nature of both provisions, secondary tax liability provision could be interpreted in light of the joint tax liability provision as it is used in the European legislation.

The author sees two reasons for implementing these recommendations. Firstly, given the fact that the VAT has the highest revenue share in total tax collected, and that VAT itself is quite vulnerable to evasion/fraud schemes, the national fiscal interest must be protected. Secondly, considering that Serbia signed the Stabilization and Association Agreement in 2013, further harmonisation of its VAT legislation with the EU VAT legislation is needed. In addition, in one of the latest EU Accession reports (2023), it is stated that Serbia is expected to further harmonise its domestic VAT legislation with the EU VAT legislation.

32 For example, the opinions of the Ministry of Finance regarding beneficial ownership of income are different for the same factual situations. See: Vasović, 2024: 267-273.

If the recommendations set by the author were to be adopted, it seems more likely that the Serbian Tax Administration would suppress VAT evasion/fraud and collect the unpaid VAT more efficiently. Thus, more supplies (if needed) and more straightforward administrative procedures would be covered under the quick reaction reverse charging. As for the supplies not previously covered, the joint tax liability provision, harmonised with the EU legislation, could help tax authorities collect the unpaid VAT. Furthermore, legal certainty would be increased by enacting a detailed joint tax liability provision.

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Антиевазионе мере у систему пореза на додату вредност Републике Србије

Резиме

ПДВ је подложнији пореској евазији у односу на друге врсте пореза пре свега због института претходног пореза, а затим због високе стопе, што доприноси већем утајеном пореском приходу. Аутор у раду анализира две антиевазионе мере које су предвиђене законодавством Републике Србије. Једна од њих је принцип обрнуте наплате који подразумева да га порески обвезници исказују и примењују у фактури, што важи само за одређене испоруке. Уколико за одређене испоруке није могуће применити наведени принцип, пореској администрацији на располагању стоји још једна антиевазиона мера: секундарна пореска обавеза. Свака од поменутих мера има своје недостатке, па тако, уз претпоставке да је потребно заштитити националне фискалне интересе и да је национално ПДВ законодавство неопходно додатно ускладити са законодавством Европске уније у наведеној области, аутор препоручује измене тренутних прописа у циљу ефикасније наплате пореза на додату вредност и превенције евазије.

***Кључне речи**: порез на додату вредност, пореска евазија, принцип обрнуте наплате, секундарна пореска обавеза, солидарна пореска одговорност, ПДВ Директива 2006/112.*

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