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Postponement of liability for VAT in cases of payments made to undisclosed supplier accounts

In our January News issue (no. 1/2013) we informed our readers of the extension of the taxable supply recipient's liability for any unpaid VAT.

To recap, starting from 1 April 2013 the recipient of a taxable supply is liable for any unpaid VAT if the price of the supply is paid to a domestic bank account which has not been disclosed in the public register of VAT payers.

However, in order to apply this new liability concept, the tax administration must call upon the liable person, in writing, to pay the outstanding VAT.

The General Financial Directorate has declared that in this respect the tax administration will not request payment of the outstanding VAT from those whose liability arises in the period prior to 30 September 2013.

This means in practice that the liability for VAT paid to an undisclosed supplier's account has been postponed until 1 October 2013.

The General Financial Directorate explains the postponement of this liability being due to the "novelty of such a type of liability and difficulties connected with the implementation of related measures by entrepreneurs".

Let us add that the postponement of this liability is without prejudice to the obligation of VAT payers to notify the tax administrator of any changes in bank accounts used in their business activity.

GFD issues information regarding tax invoices

The General Financial Directorate has issued the long-awaited information on tax documents; it was amended to a significant extent effective as of 1 January 2013 (see News 1/2013).

The GFD information should make it easier for tax entities to understand the tax document properly; i.e. to ensure that the origin of a tax document is trustworthy, its contents intact and the text legible. The General Financial Directorate points out that a tax document complying with the above requirements constitutes one of the fundamental conditions which have to be met to claim a VAT refund.

The GFD information clearly indicates that none of the envisaged simplifications have been made to tax documents because ensuring compliance with all three requirements is subject to a number of limitations, including some of a technical nature. It is possible to ensure and prove that a document's origin is trustworthy and its contents intact either via a technical solution in the case of electronic tax documents (accepted electronic signature or digital stamp, to a limited extent also using EDI technology, data box) or via a so-called audit trail.

An audit trail is a record of processes creating a reliable link between the tax document and the respective supply. In practice it should be a documentation flow of all the supply-related

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transactions, from the beginning to the end, linking different documents used within the process. The GFD information specifies, for instance, a purchase order, payment receipts, contracts, receipt and issue notes or a record of a transaction in accounting books.

Unfortunately, the information expressly states that a document sent by email as a pdf file alone does not meet the requirements of a valid tax document unless the tax entity provides other evidence of the audit trail to document the trustworthiness of its origin.

The GFD has also provided further details on how to keep tax documents and convert tax documents from paper to electronic form and vice versa.

Due to the GFD's rather strict interpretation of the tax document requirements, we recommend being sure to archive a sufficient number of other documents related to any taxable supplies purchased.

Transfer pricing – comparable uncontrolled price method in a new adjudication of the Supreme Administrative Court

The Supreme Administrative Court has issued a decision (1 Afs 101/2012-31) relating to transfer pricing which is rather controversial as to the use of the comparable uncontrolled price method.

The tax administrator found out that a fish trading company charged higher sales prices for supplies to non-related persons than when delivering the same goods to affiliated companies. The tax administration defined the price range agreed with independent persons, calculated the difference between prices agreed with the related person and other independent traders, and called upon the company to document the difference.

The company justified the lower margin used when trading with its Slovak subsidiary by stating that prices are lower in Slovakia in relative terms and the fish supplied were of lower quality, too. It was unable, however, to document either statement to a satisfactory extent. On the contrary, it was discovered that the Slovak subsidiary had a higher profit margin compared to distributors in other countries. Hence, the court ruled that the additional assessment of the price difference was justified.

As to the comparable uncontrolled price method, the court said that while it is a preferred method it assumes the comparable quality of the respective products, i.e. a sale of a commodity to both related and non-related persons. According to the court, the price level in individual markets where products are distributed is irrelevant to the application of this method. It remains to be seen whether this opinion of the court will be applied as a general rule in future or if the court has made the decision solely based on the specific circumstances of the case heard.

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