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Audit Tax & Legal Services

NEWS Nr. 1/2011

News 1/2011

An amendment to the VAT Act that was originally planned to come into force on 1.2.2011 will now become valid on 1.4.2011.We would like to take this opportunity to remind you of a few of the most significant changes.

Entitlement to deduction

Payers may claim a tax deduction from the tax document of another payer or when importing goods no earlier than for the tax period in which they have the tax document at their disposal. Consistent records will be required for this to prove the receipt of the tax documents on a date before the end of the tax period for which they are being applied.

Only in cases of cross-border supply, when the payer is, as the recipient, also the person obliged to return tax, and if the tax document is not available, may the entitlement to a deduction be proved in a different way.

The tax documents must comply with all prescribed formalities. Selected necessities, such as the tax base, the tax rate or the Tax Identification Number of the supplier or recipient of supply, can no longer be proven in any other way. A tax document with such formal shortcomings cannot be used to claim a deduction.

If the supplier states tax in the tax document which is higher than should be properly claimed by law, the recipient is only authorised to claim a deduction in an amount which corresponds to the provisions of the law.
Given that it is expressly specified that a payer is not entitled to a deduction of erroneously claimed tax, all further provisions that dealt with the correction of a tax deduction claimed in this way have been omitted from the law. Until now a recipient could correct erroneously applied tax in the ordinary tax period in which he received a corrective tax document.

The new principles for claiming a tax deduction apply to all deductions claimed during the tax period following 1.4.2011 irrespective of whether the entitlement to a deduction arises prior to this amendment coming into effect. The existing regulations are used to apply tax for the tax period prior to the amendment coming into effect. This means that the payer can decide that he will claim an entitlement to a deduction arising before the effect of the amendment in an additional tax return and adhere to the conditions of the existing wording of the law.

Partial entitlement to a tax deduction

The amendment elaborates in more detail the procedures applied in cases in which the payer does not have full entitlement to a deduction on taxable supply received due to the fact that supply is partly used for activity other than economic (deduction in a proportionate amount) or because it is partly used in economic activity to provide supply which is exempt from tax with no entitlement to a tax deduction (deduction in reduced amount).

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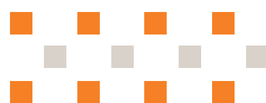

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Entitlement to deduction in a proportionate amount

If the payer also uses the received taxable supply partly for purposes not relating to economic activities, he is only entitled to a deduction in a proportionate amount that corresponds to the extent of use for economic activity. The amendment does not change the basic principles for the proportionate deduction of tax.

However, one new feature is that the payer no longer has the opportunity to claim a deduction in full for long-term assets used partly for activities other than economic when making the acquisition, and to subsequently tax use for other purposes. The payer may only continue to opt for this procedure for taxable supply that does not concern the acquisition of long-term assets.

If it is not possible to determine precisely the use of supply received for economic activity at the time of claiming a deduction in a proportionate amount, the payer determines the percentage with a qualified estimate. The claimed deduction is adjusted at the end of the calendar year in which supply is provided in the event that the actual calculation differs from the estimate by more than 10 %.

If the payer is entitled to a deduction in a proportionate amount, the deduction must be claimed no later than for the final tax period of the calendar year in which it can be applied earliest (as before in cases of a reduced deduction). After this the payer may only claim such a deduction in an additional tax return.

Entitlement to deductions for assets

Tax deductions claimed for long-term assets are subject to adjustment if in any of the subsequent years there is a change in the extent of the use of these assets for purposes which create the entitlement to a tax deduction. Changes are considered separately for each year. In the case of real estate, the term for adjustment lasts 10 years and is 5 years for other long-term assets.

There are significant changes to the rules for claiming a deduction for long-term assets created through activity for which the payer only has a partial entitlement to a tax deduction. Assets created on the basis of subcontracts should also fall within the definition of such assets.

A tax deduction claimed for other commercial assets is subject to adjustment if the payer uses them within a term of 3 years for purposes other than those considered when claiming the original deduction.

Corrections to the tax base and the amount of tax

The amendment sees the harmonisation of terminology for all corrections of tax documents; cases in which tax credit or tax debit were issued are now included under the term corrective tax document. Among others, the reason for correction must be stated on the corrective tax document.

The payer is obliged to issue a corrective tax document if there are changes to the tax base following the date of provision of taxable supply.

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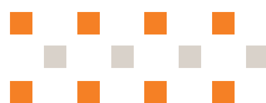

The unambiguous duty to adjust the tax base is also newly stipulated in the case of the later provision of a discount or the return of supply; this differs from the existing regulation, whereby the payer that provided supply in this case had the opportunity to make the correction of his own choosing. If there is a reduction of the tax base which results in a reduction of the claimed deduction for the recipient, the recipient is obliged to make the adjustment of the tax deduction in the period in which he learns of the circumstances decisive for correction. The duty of the recipient of supply is no longer bound to the time of receiving the corrective document and he is obliged to adjust the claimed deduction at the time this fact is known to him irrespective of whether the supplier complies with its duty and makes out a corrective tax document.

The new definition of duties in the case of a change of price will probably lead to the breaking of rooted procedures, whereby discounts and bonuses were not included in the tax base. For an appraisal of whether these amounts should be included in the tax base or not, the form of agreement between the contracting parties will be decisive; we recommend monitoring whether an instruction relating to this topic is forthcoming on the website of the Ministry of Finance.

Cases in which there is a change to the tax base upon a change of price following the date of provision of supply for the reasons laid down in the law remain separate taxable supply that is included in the ordinary tax return according to the date of provision. In the case that the payer makes a correction to the amount of tax for other reasons, he does so in an additional tax return. (Until now a corrective tax document for the reduction of the tax obligation could be included in the tax period in which it was delivered.)

Other changes

In the case of a service provided by a person registered for tax in another Member State or by a foreign person, the recipient is generally duty-bound to return and pay tax on the date of the provision of the service or on the final day of the month in which payment is made – on whichever of these days happens first. The duty to state the date of completion of information, which was considered the date of issue of the tax document, no longer applies to tax documents for these services. The date of issue of the tax document in such cases is not considered the date of provision of taxable supply.

If these services by persons from other Member States or foreign persons are provided over a period of longer than 12 calendar months, supply is considered to have been provided no later than on the final day of each calendar year. This also applies to services with the place of supply outside this country for which the payer is duty-bound to submit a summary report.

The tax obligation is transferred to the recipient in the case of inland deliveries of the scrap and waste specified in the annex to the act. The supplier issues a tax document exclusive of VAT and submits special records to the tax administrator along with the tax return. This procedure will also apply to the provision of building and assembly work as of 1.1.2012.

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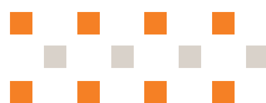

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The recipient of inland taxable supply guarantees unpaid tax from this supply if at the moment of its provision he knows, should have or could have known that the tax would not be paid and also in cases in which the price for supply evidently differs from the usual price.

The information provided above is merely informative in nature. We will be glad to advise you on the practical application of the VAT amendment.

Change in the approach of tax authorities to checking publication in the collection of documents

Legislation determines the duty that entrepreneurs entered in the Commercial Register and acting as accounting entities have to publish their financial statements, annual report and other documents in the collection of documents of the Commercial Register. Although this duty and the possibility of imposing a penalty for infringement of the duty are nothing new to the legal order, the checking of publication of the documents determined by law was not in any way systematic until recently. Of course recent information coming from sources such as the General Director of the newly established General Tax Directorate testifies to the fact that there has been a marked turnaround in the approach of the tax authorities. From now on the tax authorities will apparently carry out checks of the duties indicated above when administering income tax for each and every legal entity.

And so in this regard we consider it appropriate to provide a brief informative summary of the cases in which the duty to publish the documents mentioned above applies and when penalties for infringement of this duty may be applied.

Published documents

According to Act No. 513/1991 Sb., the Commercial Code (hereafter the "ComC"), a separate entry is made by the commercial court for each registered entrepreneur, branch of a business, business of a foreign person and/or its branch. Part of the Commercial Register is therefore a publicly accessible collection of documents, in which the registered entrepreneurs are duty-bound to file the documents specified by law. Among these are the following documents:

a) annual reports;
b) ordinary, extraordinary and consolidated financial reports if these are not part of the annual report;
c) proposals for the distribution of profit and their final form or the settlement of loss, if not part of the ordinary financial statements;
d) report of a certified auditor on the auditing of the financial statements, and;
e) reports on relations between related parties according to s. 66a (9) of the ComC.

The duty to publish the annual report and the report of the certified auditor on the auditing of the financial statements only applies to entrepreneurs that are duty-bound to have their financial statements audited by a certified auditor according to s. 20 of Accounting Act No. 563/1991 Sb. The duty to publish other documents essentially applies to all entities.

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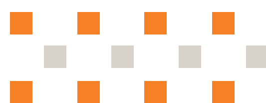

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Time limits for publication

The ComC does not set out any specific time limit in which the documents in question must be made public, simply stating that it is to happen without delay. The Accounting Act is more detailed in this regard in that for entrepreneurs that are duty-bound to have their financial statements audited by a certified auditor it lays down a time limit of 30 days following the ratification of the statements or their auditing by an auditor. In the case of limited companies and joint stock companies, where the financial statements are approved by the general meeting that must be convened for this purpose no later than within 6 months of the close of the accounting period, the ultimate deadline for publication is therefore 30.7 assuming that the accounting period is the same as the calendar year. The financial statements must be made public by the end of the accounting period which follows directly irrespective of the success of ratification or the audit of an auditor.

Penalties

As far as all documents in the above list are concerned, a disciplinary penalty of up to CZK 20,000 may be imposed by the commercial court if a missing document is not added to the collection even in the space of an additionally provided time limit. Information from practice has it that the courts basically only resort to this procedure if they are prompted to do so by third parties.

However, as already mentioned in the introduction, the competent tax authorities are beginning to use the statutory devices that they have at their disposal in the shape of penalties according to s. 37 of the Accounting Act, which can reach up to 3 % of total assets for breach of the duty to make public financial statements or the annual report. According to the statement of the General Tax Directorate, tax authorities will generally only resort to imposing penalties of a reasonable amount, but will not hesitate to impose a penalty in full in the case of repeated infringement.

Warning: All of the above mentioned is of a general indicative nature only and is not comprehensive. The purpose is only to draw attention to the most important points of the amendments and changes. No damage claims for steps made based on the information shall be accepted. If you use information included in this document, you will only do it at your own risk and responsibility.

Please do not use information in this material as a base for a specific decision-making. Instead, always use our professional services of qualified experts.

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