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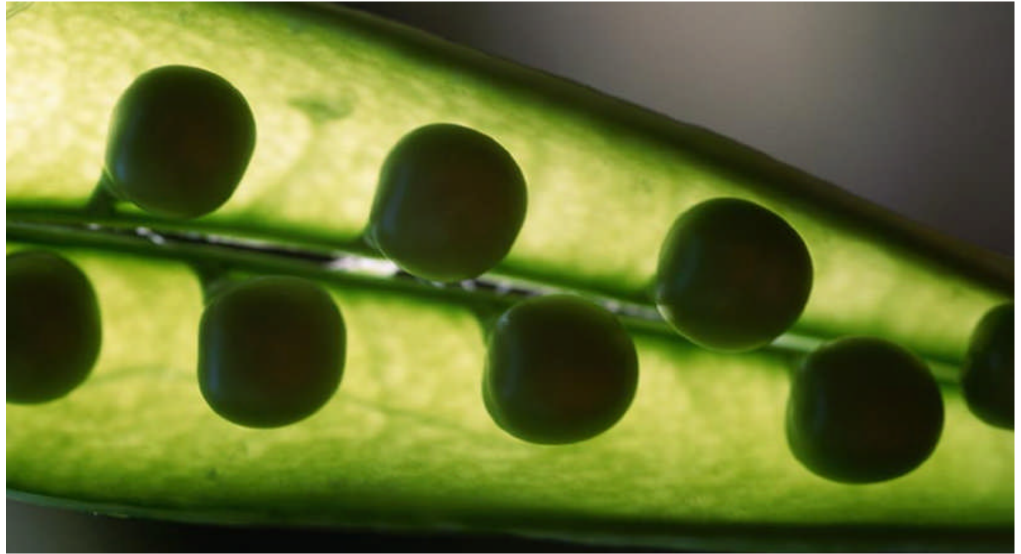

Tax deductibility of voluntary supplementary pension insurance (VSPI) expenditure in accordance with CITA-2

In accordance with the Corporate Income Tax Act (CITA-2), receipts and expenditures subject to accounting standards shall be taken into account in establishing the tax basis. The general principle set by CITA-2 for establishing profit is the disclosure of receipts and expenditures required for obtaining the receipts which are taxed subject to this Act.

In addition to this, it is necessary to consider that CITA-2 defines costs relating to private life (such as those for entertainment, holiday, sports and recreation, including the respective value added tax) as non-recognized expenditure. Next to costs relating to the private life of the owners and affiliated persons which are not recognized as an expenditure are costs relating to the private lives of other persons, except for costs incurred in the provision of benefits and other disbursements related to employment if they are subject to the Act regulating personal income tax.

This means that, if we consider the provisions of the Personal Income tax (PIT-2) and CITA-2 at the same time, the VSPI premiums paid by the employer to the pension scheme provider are not included in the tax base from employment.

Thus, they are treated as non-expenditure costs in the employer's tax return, however large the amount, to the lower of the following:

- 24 % of the statutory contributions for pension and disability insurance relating to employees,
- 2.390 Euros.

Notwithstanding that, VSPI premiums paid by the employer which do not exceed the above mentioned amount can be applicable as a reduction of the tax basis in accordance with Article 58 of CITA-2. In the case that the payments for VSPI exceed the above mentioned criteria and are consequently taxed in accordance with PIT-2, it is the surplus of this amount which is considered to be the employer's expenditure in the corporate tax return.
However, we have to stress one more time that in this case the tax relief from Article 58 CITA-2 is applicable only in accordance to the above mentioned height.

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Carousel and missing trader fraud

The Slovenian Tax Authorities have published a notice with respect to the tax evasions from carousel and missing trader fraud.

Tax evasion or so called carousel or missing trader fraud occurs where transaction, forming part of a chain supply, involves a taxable person identified for VAT purposes in Slovenia acting as a missing trader. In a chain one company exercises the right to deduct input VAT or applies for refund of VAT, which not settled by missing trader company. Common characteristics of missing trader companies can include the following indicators: the company is newly registered for VAT purposes, it does not have a licence, funds or employees who conduct business, its transactions are doubtful, etc.

The companies which take part in a missing trader fraud, can be sanctioned; Tax Authorites can deny their right to deduct input VAT, or the burden from unpaid VAT can be transfered to the other applicants in this missing trader fraud. Also, criminal sanctions are not excluded.

In order to avoid this kind of business and tax risk, Tax Authorites recommend regular check of the validity of contractors VAT identification number.

Slovenian Tax Authorities also performs detailed check of application for issuing VAT ID number. To avoid the negative implications, we strongly recommend that all companies which are planning to conduct business in Slovenia review whether they are obliged to identify for VAT purposes in Slovenia and to schedule the possibility of VAT identification in their business plans. Otherwise, it might happen, that VAT ID number will not be received in time.

For further information please contact Črtomir Borec.

The right to deduct input VAT

Slovenian Tax Authorities have recently published opinion no. 4230-50/2007-2, regarding conditions under which the taxable person can exercise the right to deduct input VAT in the reverse charge mechanism for intra-Community acquisition of goods and for services defined in article 29 of the Slovenian VAT Act.

Tax Authorities explained that the taxable person may deduct input VAT in the tax period in which the invoice or other document containing the required information for the correct calculation of VAT was received. In case of import the taxable person should present the import declaration.

In the Bockemühl case (C-90/02), the European Court of Justice explained that upon supply of services in which the person liable for VAT is the recipient or the buyer, the taxable person should meet formalities prescribed by each Member State in order to deduct VAT. ECJ stated that Member States may only prescribe formalities of technical nature, which should not make the right to deduct input VAT impossible or excessively difficult.

In line with the aforementioned ECJ judgment, the Regulation on the implementation of VAT Act has been amended. The Regulation defines that the taxable person liable for VAT as a customer or a recipient of goods or services should disclose with an invoice or some other document containing the required information for correct calculation of VAT in order to exercise the right to deduct input VAT. The VAT liability should be recorded in the VAT return.

For further information please contact Črtomir Borec.

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