

# Tax & Legal Alert

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## VAT treatment of supply of electricity through distribution system

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The Slovenian Tax Authorities issued an interesting explanation on VAT treatment of supply of electricity when Slovenian company sells electricity to taxable dealer (distributor) established outside EU (e.g. Switzerland), but VAT registered also in Slovenia.

Despite the Article 38 of EU VAT Directive 2006/112/EC which is implemented in Slovenian VAT legislation, the tax authorities are of the opinion that Slovenian seller performs local supply to the taxable dealer to its Slovenian VAT ID number. Their argument is that the place of supply as prescribed in the Directive was agreed to avoid a number of VAT registrations of taxable dealer trading with electricity across EU. Since this taxable dealer is already VAT registered in Slovenia, the simplification does not apply and the supply is treated as local supply

between two Slovenian taxable persons.

Although, the explanation will ease the business operations of taxable dealers with Slovenian VAT ID number, we would like to stress that the nature of explanation of Tax Authorities is not binding and does not bring legal certainty for taxable persons. With this respect it is questionable how firm the explanation is and it is up to the concerned dealers to rely on it and risk. To avoid this uncertainty the taxable dealers might wish to request a binding ruling.

For further information please contact **Črtomir Borec**.

# On 17 March 2008 EC Council has adopted Regulation (EC) No 274/2008 amending the Regulation (EEC) No. 918/83 setting up a Community system of relief from customs duty

According to the regulation any consignment dispatched to its consignee by letter or parcel post containing goods of a total value not exceeding EUR 10 shall be admitted free of import duties. This relief shall not apply to alcoholic products, perfumes and toilet waters and tobacco or tobacco products.

Since the value limitation remained unchanged since 1991, when it was set at EUR 22, Council has adopted new regulation on a community relief from customs duty. The value limitation of EUR 22 shall be replaced by EUR 150.

From 1 December 2008 ongoing any consignment dispatched to its consignee by letter or parcel post containing goods of a total value not exceeding EUR 150 shall be admitted free of import duties. The latter will be of particular interest for companies performing mail order business.

For further information about CIT please contact Črtomir Borec.

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## Tax Relief for Research and Development

Tax relief for investments in research and development (R&D) is an option to decrease the tax burden. General tax relief for R&D is recognised in the amount of 20% of investments for R&D. Taxpayers, who have seat and perform activities in a region where GDP is lower than average are eligible for additional tax relief for R&D (known as regional tax relief). Regional tax relief is recognised in the amount of 10% of investments for R&D in regions where GDP is less than 15% lower than average or 20% of investment for R&D in regions where GDP is lower than 15% of average in Slovenia.

The Executive Act defines R&D as an activity solving scientific or technical uncertainty and where it is an essential element of innovation. Tax relief is recognised for internal R&D (activities performed in company) and for purchase of R&D services (R&D activities performed by other persons).

A taxpayer asserting tax relief for R&D has to prepare a business plan or development project (R&D documentation). R&D documentation has to enable the monitoring of the R&D activities in a way that it is evident that activities are performed according to plan. If a taxpayer carries out more R&D activities from different fields, it is necessary to prepare R&D documentation for every single R&D project.

According to past experience, we expect that R&D tax relief could be a subject of detailed tax inspections in many cases, as R&D is often closely linked to the taxpayer's other activities. Therefore it is vital that the taxpayer is able to prove that costs arise from R&D and that costs are properly allocated to the R&D projects (e.g. defining a suitable key for allocation of indirect costs to the R&D projects).

For further information please contact Beta Štembal.

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