

Tax Alert

Slovenia • No. 6/09, August 2009

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The right of the taxable person to correct the Value Added Tax charged and shown on the invoice in error

The European Court of Justice (ECJ) reached a decision in June 2009 with respect to the case C-566/07 (Stadeco). The Court in its ruling gave an answer to the question as to how to correct Value Added Tax (VAT) which is due solely as a result of being charged and shown on the invoice in error.

Below we present the summary background of the case at hand, the ruling of the European Court of Justice and the tax implications relevant to taxable persons from the point of view of the Slovenian VAT legislation.

Company Stadeco issued invoices for services performed to its business partner Economische Voorlichtingsdienst, which as a body governed by public law is not entitled to deduct input VAT, on which Dutch VAT had been charged and paid. Economische Voorlichtingsdienst ordered the services of Stadeco solely for activities not subject to turnover tax in the Netherlands. The services were performed in Germany and in third countries. The Dutch tax authorities informed Stadeco that it was not liable to any turnover tax in the Netherlands with regard to the services in question. Subsequently, Stadeco requested reimbursements of all tax charged and paid in error. The Dutch tax authorities agreed to the reimbursement provided that all the issued invoices were corrected. During an inspection, the tax authorities established that Stadeco had not issued any credit notes to Economische Voorlichtingsdienst. Furthermore, the company did not make any repayment of VAT, which was primarily charged and received by Economische Voorlichtingsdienst. For this reason, the tax authorities issued a supplementary tax notice for the entirety of the reimbursed VAT. The National Court, prior to referring the questions for a preliminary ruling to ECJ, was dealing with the issue as to whether the correction of invoices is essential.

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Key deadlines in the next month

- 10.09. Corporate income tax payment on account**
- 15.09. Intrastat report for July 2009**
- 20.08. Bank of Slovenia - reporting of foreign bank account details and foreign current and correspondent accounts (for financial service companies)**
- 30.09. VAT return for July 2009**
- 31.09. Bank of Slovenia - SKV report**
- 31.09. Bank of Slovenia - Monthly report on the investments**

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Namely, the status of Economische Voorlichtingsdienst excludes any right to deduct input VAT and therefore there is no risk of loss of tax revenue. Furthermore, the National Court was considering, since the place of supply of the services in question was not the Netherlands, whether a turnover tax debt arose in the Member State where the issuer of an invoice is established, when the place of supply relating to that invoice is deemed to be in another Member State. Also the National Court was considering whether the refund of the tax debt can be made subject to the correction of the invoice in question, particularly when the beneficiary of the services supplied does not have the right to deduct input VAT.

Any person who includes VAT on an invoice, is liable to pay VAT. Whereby it is irrelevant whether the service was supplied in another Member State other than the Member State where the issuer is established. Member State in which the service was supplied is entitled to the turnover since it also carries the risk of the loss of tax revenue.

Member States may adopt measures in order to ensure the correct levying and collection of the tax and for the prevention of fraud, thus they may therefore request the issuer of the invoice to issue a correction of the primarily incorrect invoice. Only where the issuer of the invoice completely eliminates the risk of the loss of tax revenue, the principle of the neutrality of VAT requires that VAT which has been improperly invoiced can be adjusted without such adjustment being made conditional by the Member States.

In addition, Community law does not prevent a national legal system from disallowing repayment of charges which have been levied but were not due, where to allow such repayment would lead to unjust enrichment of those having the right. The Netherlands tax authorities have made the refund of the VAT subject to the payment by the issuer of the invoice in question, to the beneficiary of the services performed, of the amount of tax incorrectly paid. Whereby all relevant facts should be considered, including the definition of remuneration in the contract. If the contract defines a fixed amount on which the VAT is not chargeable under the prescribed rate, such reimbursement would not lead to unjust enrichment of Stadedco, even if Stadedco would retain the reimbursement of VAT in whole.

The provision that any person who includes VAT on an invoice, is liable to pay VAT is implemented also in point 8 of Article 76/1 of the Slovene Value Added Tax Act. If someone mentions VAT on an invoice, even though he is not liable to charge VAT according to the Act, or if VAT should not be charged, that person is not entitled to retain the charged VAT, but is liable to pay VAT in the revenue as if the tax was due. This provision has the aim of preventing abuse.

On the other hand, the formal restrictions with respect to the right to deduct VAT are summarized in fourth and fifth paragraph of Article 67 of the VAT Act, stipulating that the taxable person may not exercise the right of deduction:

- if VAT is charged to him by a person who is not allowed to charge VAT
- if amount of VAT charged exceeds the amount of VAT due.

The above mentioned restrictions have the aim of preventing abuse with respect to deduction of VAT.

When VAT is charged in error by the supplier of goods or services, the issuer of the invoice will claim the repayment of VAT. The issuer and the recipient of the invoice settle between them the VAT mentioned on the invoice in error, in accordance with Article 146 of the Regulation on the implementation of the Value Added Tax Act. Whereby it is important, insofar as the issuer identifies the mistake after the due date for the submission of VAT return expired, and the recipient has already exercised the right to deduct VAT in accordance with this invoice, that the issuer of the invoice adjusts (decreases) the tax liability in the VAT return for the tax period in which he receives the written confirmation of the correction (reduction) of deducted VAT.

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(You can read more in the article mentioned below)

For further information please contact Tamara Šerdoner

Tax residency status control within the electronic reporting system eDavki

The Slovene Tax Authority issued a notification about exercising a special control over the tax residency status of individuals starting from 1 January 2009. This special control shall be implemented in the individual REK forms and shall be exercised separately for each individual receiving taxable income. You will not be able to submit REK forms if the information concerning the tax residency position is not in line with the data stated in the tax registry. During the transitional period from 1 September 2009 until 31 December 2009, you will be able to submit the REK forms, however with a warning that the tax residency status is not in compliance with the tax registry. The transitional period shall therefore be intended for establishing an individual's tax residency status at the Slovene Tax Authority.

All income received by an individual who has not arranged his tax residency status, shall be reported on REK forms as income received by a »tax non-resident« until the residency status is established in the tax registry.

With reference to the above changes the Slovene Tax Authority has declared an intention to prepare instructions which shall simplify the procedures for establishing the tax residency status of foreign natural persons

For further information please contact Sonja Omerza

Recently published professional articles by members of our tax team

Marijana Ristevski, »**Pravica davčnega zavezanca do popravka davka na dodano vrednost, ki je pomotoma obračunan in izkazan na računu**«, v reviji *Denar*, št. 7-8, Julij -Avgust 2009 (str. 15-17)

Mag. Tina Klemenc, Vid Čibej, Isabel Verlinden, Joseph Andrus, »**Javno posvetovanje pod okriljem OECD o osnutku dokumenta »Poslovno prestrukturiranje z vidika transfernih cen**«, v reviji *Denar*, št. 7-8, Julij - Avgust 2009 (str. 25-28)



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