

Tax & Legal Alert

Slovenia • No. 10/08, November 2008

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VAT exempt insurance and reinsurance transactions whereby the taxable persons performing activities do not dispose with the authorisation for services

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Slovene Tax Authorities have issued an explanation (no. 4230-261/2008-2, from 20 October 2008) whether the services provided by an insurance agent or broker who does not dispose with an authorisation should be treated as VAT exempt.

Services related to insurance and reinsurance transactions, performed by an insurance agent or broker, are VAT exempt notwithstanding to the fact that the insurance agent or broker has or has not obtained an authorisation to perform this activity and whether or not he complies with the conditions provided with the Insurance Act for performing such an activity.

Thus the disposition with the authorisation for providing the insurance agency services is not an overriding condition to determine whether the service is exempt or subject to VAT, even though the insurance legislation is breached.

This explanation is based on the ECJ case law (e.g. Fischer C-283/95,

Lange C-111/92 and CPP C-349/96) in accordance to which in case of competition between lawful and unlawful transactions, the principle of fiscal neutrality precludes different treatment of these transactions. Thus, Member States may lay down the conditions and limitations for the exemption of these transactions; however the exemptions are to be applied in accordance with the principle of fiscal neutrality. Furthermore the exemption from VAT of insurance and reinsurance transactions must be interpreted as meaning that a Member State may not restrict the scope of the exemption exclusively to supplies by insurers who are authorized by national law to pursue the activity of insurer.

For further information please contact Marijana Ristevski and Anka Pogačnik.

Tax residency

Slovene Tax Authority published a note on 24 November 2008, requesting individuals who do not have either permanent residence or their centre of personal or economic interest in Slovenia and they reside in Slovenia in total for more than 183 days per tax year, to arrange tax residency status in Slovenia. The competent Tax office will send a draft version of annual tax return with the calculation of the final annual tax liability only to tax residents. On the basis of previously determined tax residency in Slovenia as prescribed by Article 267, paragraph 3 of Tax Procedure Act. Therefore individuals who consider themselves as tax residents of Republic Slovenia are invited to settle their residency until the end of January 2009.

If the individual does not receive a draft of the annual tax return for 2008 until 31 May 2009, he/she is, according to Article 267, paragraph 4 of Tax Procedure Act, liable to submit the Annual tax return until 30 June 2009.

For further information please contact Sonja Omerza and Evelina Bračič.



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