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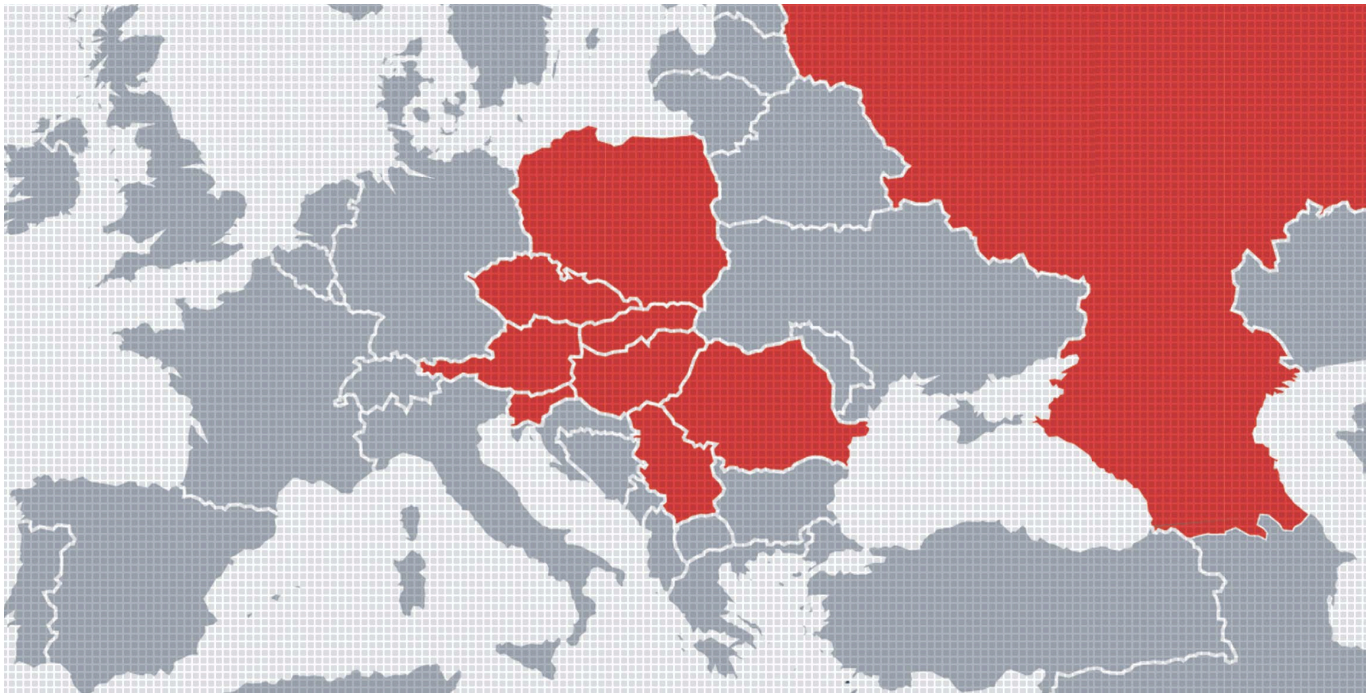
Major differences in the VAT system of the CEE countries to the EU regulations



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Eszter Balogh
Partner

Dear Readers,

In our third issue of the 2018 CEE newsletters we present you the differences in value added tax rules of nine CEE countries. In the European Union, value added tax is probably one of the most harmonised types of tax, yet there are several areas where domestic rules differ somewhat from the EU VAT Directive. In most cases, the differences are allowed in the Member States (some of these are the so-called "may" provisions).

methods and tools used against VAT fraud

We find differences in the application of domestic reverse-charge methods, or in the methods and tools used against VAT fraud. This latter topic is probably the hottest issue nowadays, looking at the special online invoicing rules recently introduced in Hungary, or the VAT scoring system in Romania, where the tax authorities can analyse various topics and calculate a score for companies wishing to register in Romania; if the overall score is below 51 points (i.e. negative aspects outweigh the positive aspects), the fiscal risk is high and the VAT registration is rejected (this rule is fortunately not applicable for foreign entities simply wishing to register for VAT purposes in Romania).

VAT compliance and related administration burden is increasing

It is quite obvious from reading the CEE region articles that VAT compliance and related administration burden is increasing in the region (one unique example is the VAT control statement obligation introduced in the Czech Republic).

You should also read our summary about the latest amendments in the EU candidate country of Serbia from a VAT perspective. Needless to say that a large number of outstanding issues has been solved in the negotiation process, but there are still differences between VAT regulations in the European Union and in the Republic of Serbia.

Russia, the biggest player in the CEE region and a third country from an EU perspective, tells us what to do if foreign companies provide, or participate in providing, electronic services in Russia.

It is not possible to list all the differences in the region from a VAT perspective of course. However, I am pretty sure that by looking into the details in these countries you can better understand the discrepancies, prepare for the challenges, and recognise the opportunities if you want to move your business into our region.

better understand the discrepancies, prepare for the challenges

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Specific features of Austrian VAT Code

Author: **Gottfried Schellmann**

The Austrian VAT Code has some specific features that are worth highlighting given the provisions of the main VAT Directive 112/2006. The principle deviation in Austrian value added tax rates compared to the Directive stems from the fact that Austria stipulated the following two exceptions in the Accession Treaty with the European Union:

In general, the letting of immovable property for residential use is "non-genuine" (without the right to deduct the input VAT incurred in the prior production and distribution processes) exempt from VAT according to the main VAT Directive (Article 135 (1) point l)). In Austria, residential letting revenues are charged at a reduced rate of 10%. This key deviation from the general VAT Directive rule is stipulated in Article 117 (2) and is unlimited. It should be mentioned that renting parking spaces is not included in this deviation and is subject to the normal rate of 20%.

residential letting revenues

Furthermore, a reduced value added tax rate ("parking rate") of 13% applies to the supply of wine produced and sold by farmers (see Article 119 for this special deviation).

wine produced and sold by farmers

Reverse charge option according to Articles 199 and 199a

Articles 199 and 199a contains the application of a domestic reverse charge mechanism for construction services, including repair, maintenance and cleaning; supply of greenhouse gas emission allowances, supply of immovable property (where the supplier has opted for taxation of the supply), etc. The entitlement to pick one of the listed types of revenue to make it subject to the obligatory reverse charge mechanism is optional for Member States. Austria has implemented the reverse charge for several supplies: construction services, supplies of goods provided as security, supplies following the cession of reservation of ownership, supplies of immovable property sold by a judgment debtor in a compulsory sale procedure, sale of industrial waste or recyclable waste, supply of game consoles, tablets and laptops, supplies of mobile phones and integrated circuits, supplies of gas and electricity certificates, supply of greenhouse allowances.

Austria has implemented the reverse charge for several supplies

Supplies of real estate

Article 12 of the main VAT Directive provides an option regarding treatment as a taxable person for those who carry out the following transaction occasionally:

- the supply, before first occupation, of a building or parts of a building and of the land on which the building stands,
- the supply of building land.

Austria did not exercise this option.

Specific Austrian implementation of rule concerning liability for VAT payable by foreign businesses

If an entrepreneur without a registered office, regular residence or fixed establishment in Austria (irrespective of whether the entrepreneur is situated in the EU or in a third country or uses his VAT identification number) carries out taxable supplies in Austria (exception: Decree 584/2003 and supplies of services regarding admission to cultural, artistic, scientific, educational, athletic, entertainment and similar events) the recipient of the supply qualifying as a taxable person or as a non-taxable legal person has to withhold the VAT due for the supply and pay it to the foreign business' tax account at the Austrian tax office of Graz-Stadt. This means the recipient will be held liable for any tax loss if the regulation is not observed. The withholding scheme mainly applies to the supply of goods because supplies of services and installations are already covered by the reverse charge system.

withhold the VAT and pay it to the foreign business' tax account

ECJ confirms Austria position on chain transactions

Chain transactions are not regulated separately under Union law. The financial authorities of the individual Member States insist on their own positions. In a preliminary ruling procedure conducted by the Austrian Federal Finance Court (Bundesfinanzgericht), the European Court of Justice recently confirmed the Austrian stance with regard to the allocation of "moved supply" of goods that is zero-rated as an intra-Community supply of goods. According to the Austrian tax authorities, the allocation of "moved supply" is based exclusively on the transport order.

allocation of "moved supply" is based exclusively on the transport order

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In the case (21 February 2018, C 628/16 Kreuzmayr) between Austria and Germany, the first party in the chain (Germany) was not informed of the sale of the goods through its customer (Austria), and the third party (Austria I) in the chain was in charge of transporting the goods. DE zero-rated its sales regarding them as exempt intra-community supplies. As the second supply was invoiced as a local supply in Austria, the question arises of whether the third party in the chain is entitled to deduct the input VAT with regard to the invoiced VAT.

intentions of the intermediate purchaser must be taken into account

As a result the ECJ has ruled that the intentions of the intermediate purchaser at the time of its acquisition must be taken into account. The prerequisite for this is that the intentions are recognisable based on objective considerations. Moreover, the ECJ stated on the basis of Article 32 (1) that the third party in the chain is not entitled to deduct the input VAT with regard to the incorrect invoice which included local Austrian VAT because the "moved supply" is attributable to the second supply, and thus constitutes a zero-rated intra-Community transaction. The Austrian VAT was therefore incorrectly shown on the invoice from AT to AT I, which is why the end customer (AT I) is not entitled to deduct input tax. The judgment demonstrates the practical difficulties surrounding the application of the 0% VAT rate in chain transactions.

zero-rated intra-Community transaction

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VAT control statement obligation

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The concept or difference that surprises international clients the most in the Czech Republic when compared to their national legislation and/or the uniform legislation embodied in the European VAT Directive (2006/112/EC) is often a special administrative duty, namely the duty to prepare and submit a VAT control statement.

In other EU Member States, VAT payers are used to submitting a VAT return and an EC sales list. These standard duties are regulated under Articles 250 through 271 of the European VAT Directive and compliance with them is also mandatory in the Czech Republic.

unique feature of the Czech system

However, the VAT control statement is a unique feature of the Czech (and Slovak) system. We cannot say that this duty is imposed in contradiction with European law though. Article 273 of the VAT Directive permits Member States to introduce further duties which they find necessary to ensure the proper collection of VAT and prevent tax evasion.

considerable administrative load and a time-consuming exercise

It is primarily tax evasion that the VAT control statement aims and intends to identify. This goal is obviously praiseworthy, but preparing a VAT control statement constitutes a considerable administrative load and a time-consuming exercise for VAT payers, which is why it has become the subject of frequent criticism. That said, the Czech tax administration authorities are very happy with the VAT control statement and currently there are no indications that it will be abandoned.

Who submits a VAT control statement?

VAT payer

The duty to submit a VAT control statement applies to every VAT payer who:

- has made a taxable supply, with the place of such taxable supply being within the Czech Republic,
- has received a taxable supply, with the place of such taxable supply being within the Czech Republic,
- has made or received a taxable supply in the Czech Republic under the reverse-charge regime,
- has purchased goods from another EU Member State,
- has received a service from a person registered in another EU Member State or a third country.

So the obligation to submit a VAT control statement does not apply to VAT payers who only make VAT-exempt supplies with or without the entitlement to deduct VAT.

What information must be included in a VAT control statement?

Detailed information on each taxable supply must be given in the VAT control statement, in particular:

- VAT no. of the customer/supplier,
- tax document no. (of the supply provider),
- date of taxable supply/duty to declare the tax,
- tax base,
- VAT amount.

each row represents one tax document

This means each row of the VAT control statement represents one tax document (invoice).

Only in selected cases (e.g. received taxable supplies where the recipient exercises their right to deduct VAT) are taxable supplies worth up to CZK 10,000 (roughly EUR 390) including VAT not reported individually but in aggregate.

How often and by when should VAT control statements be submitted?

each month

Legal entities (corporations) must submit a VAT control statement each month. The statement must be submitted within 25 days of the end of the calendar month. Any response to the tax administrator's request to change, add or confirm data stated in the VAT control statement must be sent within just five business days.

Potential penalties

a fine ranging from CZK 1,000 to CZK 500,000

VAT payers failing to submit a VAT control statement within the prescribed period or failing to respond to the tax administrator's request are required to pay a fine ranging from CZK 1,000 (roughly EUR 39) to CZK 500,000 (roughly EUR 19,500) depending on the nature of the breach.

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Special features in Hungarian VAT system

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It is well-known that Hungary has the highest VAT rate in the EU, with a general rate of 27%. This has forced the Hungarian government to protect VAT revenues and reduce the VAT gap (i.e. the ratio of uncollected VAT) even more, which has resulted in the introduction of certain protective regulations to the Hungarian VAT system in the last couple of years.

Some of these regulations increased the administrative burden on companies, but thanks to these measures the Hungarian government has managed to lower the VAT gap significantly.

Domestic reverse-charge

minimise the possibility of carousel frauds

To minimise the possibility of carousel frauds and problems with the VAT refunds of businesses being part of a long chain of subcontractors, certain products and services fall under the domestic reverse-charge mechanism.

The most important of these products and services are:

- agricultural products,
- steel, metal and iron products,
- construction services subject to a building permit,
- hiring labour.

Whitening the economy

increase the efficiency of tax inspections

Other provisions introduced in recent years are helping to whiten the economy and increase the efficiency of tax inspections, such as:

- data export function (automatic provision of invoicing information in an xml format in the course of a tax inspection),
- domestic summary report of incoming invoices with a VAT amount exceeding HUF 100,000 (roughly EUR 320),
- tax authority's online link with cash registers,
- EKAER system (electronic road transportation control system) monitoring IC movements from or to Hungary and local transportation,
- online reporting of the invoice details of outgoing invoices with a VAT amount exceeding HUF 100,000 (roughly EUR 320).

The introduction of the EKAER system and the online invoice reporting system required a huge effort from companies when creating the technical background for these new obligations, not to mention the cost of the implementation and external advisors.

Other provisions

sale of new residential properties is taxed at a VAT rate of 5%

One other special feature in the Hungarian VAT system is that the sale of new residential properties is taxed at a VAT rate of 5%. This regulation was intended to boost the economic recovery of the building sector.

The following rules and regimes are also implemented in the Hungarian VAT system, most of them also being regulated by the EU VAT Directive:

- VAT grouping,
- VAT warehouse,
- call-off stock,
- triangulation simplification.

Summary

the Hungarian VAT system is quite unique and innovative in the field of VAT collection

The Hungarian VAT system is quite unique and innovative in the field of VAT collection. Most of the special features mentioned above are allowed by the European VAT Directive, and in some cases their effect on the economy was even investigated by the EU, but some of them are beyond the scope of the common European VAT system.

A few of the regulations above will only be in force for a limited period, e.g. the reverse-charge on agricultural products or the 5% VAT on residential properties, while some of them will be with us for a long time, like the EKAER or online invoice reporting.

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Input VAT deduction for transactions settled under reverse charge mechanism

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There are many VAT rules in Poland which do not stem directly from the VAT directive, and therefore we could ask whether they are compliant. Among others, these include additional requirements which must be fulfilled to reduce the taxable amount in the case of non-payment by the other contracting party (so-called bad debt relief). However, the most frequently discussed issue in Poland is the restriction of the period for input VAT deduction with respect to transactions settled using the reverse charge mechanism (e.g. intra-Community acquisitions, ICA, or imports of services).

until the end of 2016

Until the end of 2016, Polish taxable persons could report input and output tax resulting from ICAs and the import of services in the same VAT return, irrespective of when the invoice was received and when the output VAT was reported. Consequently, purchases of goods from the EU and service imports were neutral even if they were not reported on time.

irrespective of when the invoice was received

Situation changed from 1 January 2017

new regulations

From this date onwards, new regulations have been enforced in Poland. Accordingly, taxpayers are entitled to deduct input VAT paid on a transaction for which the reverse charge mechanism applies, provided that the output VAT from this transaction is reported in their VAT return within a maximum of three months from the end of the month in which the tax became chargeable. If the output tax is reported later, input VAT can be deducted in the VAT return for which the filing deadline is still pending (current VAT return). Output VAT, however, must still be reported in the VAT return submitted for the month in which the tax became chargeable.

within a maximum of three months

Practical aspects of the changes

The practical impact of this is that where a reverse charge transaction is reported after the three-month time limit, the input and output tax are reported in VAT returns for different periods. This can lead to tax and interest arrears. As invoices documenting ICAs and imports of services are usually received with some delay, reporting output VAT within this time limit is not always possible. So many taxable persons in Poland face the problem of being obliged to pay interest due to not reporting these transactions on time.

tax and interest arrears

Moreover, to meet the (three-month) deadline for reporting output and input VAT from a reverse-charge transaction in the same VAT return, and avoid any negative consequences, taxpayers need to correct their VAT returns by this rather short deadline. A subsequent correction of VAT returns is usually required when additional invoices are received. This causes a lot of administrative work for taxpayers.

a lot of administrative work

So it went to court

The Polish provincial administrative courts held that taxable persons shall not be obliged to pay interest due to reporting ICAs after three months (case no. I SA/Kr 709/17 and no. III SA/Wa 2488/17). It was pointed out that in accordance with the principle of neutrality, taxable persons cannot bear the economic burden of VAT. Moreover, output VAT cannot be reported until the invoice is received, and it is the supplier who must be blamed for the delay in providing it. Therefore the regulations were considered to be non-compliant with EU law.

regulations were considered to be non-compliant with EU law

Despite this tax-friendly approach of the administrative courts in Poland, neither have the regulations been changed nor has a preliminary ruling to the European Court of Justice been submitted so far. Moreover, in August 2018 one of the provincial administrative courts presented a negative opinion in this respect (I SA/Op 246/18). Given that the tax authorities and taxable persons are obliged to obey the provisions of the VAT Act, as long as they remain unchanged then interest will have to be paid. Will the tax-friendly approach of administrative courts have an influence on the lawmakers? Or will the preliminary ruling to the ECJ be submitted? These are some of the questions raised.

provisions remain unchanged

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VAT registration, one of the main VAT challenges in Romania

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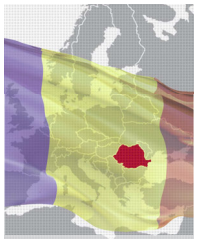

WTS in Romania

Like all EU countries, Romania has implemented all of the EU's VAT directives, such as VAT Directive 2006/112/EC or the VAT Refund Directive 2008/9/EC for entities from other EU Member States. EU VAT Regulations are also applicable in Romania.

However, Romania has some of the most burdensome (even arbitrary) procedures for registering for VAT purposes, as the Romanian tax authorities want to fight against VAT fraud with a rigid VAT registration procedure applicable to Romanian companies.

rigid VAT registration procedure

Fortunately, Romanian branches of foreign companies / EU companies registering directly for VAT purposes in Romania are not subject to the VAT risk analysis below.

Compared to local companies, the VAT registration procedure is simplified for non-resident companies which intend to register for VAT purposes in Romania, however, both procedures mean documents justifying the intention to perform an economic activity in Romania must be provided to the tax authorities.

simplified for non-resident companies

VAT scoring

The tax authorities analyse various topics, allocate negative points for each topic (the exact scoring is not public) and compute the overall score by adding 100 points to the sum of the allocated points. If the overall score is below 51 points (i.e. negative aspects dominate), the fiscal risk is high and the VAT registration is rejected.

exact scoring is not public

Aspects considered during VAT registration

Having considered the above, below we present some aspects which should be avoided by Romanian companies registering for VAT purposes (the examples are not exhaustive).

A Romanian company may not have its headquarters within a lawyer's office and the period of use for the headquarters should be more than one year. The company should perform its activity in its headquarters and / or working units.

period of use for the headquarters should be more than one year

The administrators / shareholders (with more than 25% of the shares) must not have committed any fiscal offences / crimes, and they may not have been administrators / shareholders in other Romanian companies in the following cases: insolvency / bankruptcy / fiscally inactive / trade registry inactive / VAT registration annulled / overdue taxes.

The company should have an employee with a university degree in economics as the chief accountant, or it should conclude an agreement with an authorised bookkeeping provider. The company should also have other employees.

Furthermore, the company should have bank accounts and every person authorised to use the bank accounts should be an administrator / shareholder / employee of the company.

What is also interesting is that the Romanian tax authorities consider it negative if at least one of the administrators is a non-Romanian tax resident individual, and the company applying for VAT registration has share capital below RON 45,000 (roughly EUR 9,600).

tax authorities consider it negative if at least one of the administrators is a non-Romanian tax resident individual

Conclusions

In light of the above, VAT registration can take more than a month. The most important aspect of the current procedure (such rules are not new in Romania) is that the Romanian tax authorities are compelled to have discussions with the company applying for VAT registration (in the past, the tax authorities could simply reject the VAT application without allowing the companies to provide explanations).

are compelled to have discussions with the company applying for VAT registration

Foreign entities wanting to establish a Romanian subsidiary should consider the above recommendations as part of their entry strategy in Romania, and for tax planning, especially from an operational / timing point of view.

For example, if a Romanian company is not to have employees, its administrator will be a foreign individual, it will have the minimum share capital and its headquarters will be in the premises of a service provider, then its VAT registration process will not be straight-forward, even if the new company has a sustainable business model.

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VAT on electronic services

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Before Article 174.2 of the Russian tax code came into force, there was no concept of electronic services in Russian indirect taxation.

Court cases which changed the rules

The turning point came with the rejection by the Supreme Court of the Russian Federation in the tax case of "Mail. RuGames". The court upheld the decisions of three lower-instance courts. The company, who was the owner of interactive computer games hosted on internet sites, consequently lost.

In this case, clients (individuals) received free admission and the right to use the games' services on the basis of a license agreement. But additional functions of the games could only be used for a fee. The Russian tax authorities and courts deemed this to be an additional service, which was not exempt from Russian VAT. Since the buyers of the services were located within the Russian Federation, the companies accrued VAT at a rate of 18 %.

an additional service, which was not exempt from Russian VAT

Similar court cases appeared with services of other international IT companies such as the Apple Store and Google Play. The above-mentioned court cases revealed significant problems related to the VAT taxation of electronic services in Russia:

no definition

- There was no definition of electronic service and what relates to the VAT-exempt transfer of intellectual property rights.
- There were questions regarding the definition of the place of sale of such services in some controversial cases.
- There was no mechanism for withholding VAT from foreign suppliers that do not have branches in the territory of the Russian Federation, in the event the purchaser of the services is an individual.

Federal Law No. 244-FZ came into force from 1 January 2017

Federal Law No. 244-FZ was published on 3 July 2016 (hereinafter: the Law), and it amended the Russian VAT treatment of a number of online digital services and actually introduced VAT on electronic services alongside defining electronic services for Russian tax purposes. These rules came into force from 1 January 2017.

VAT payment mechanism for digital services

Currently, Russian VAT is applied for the digital services designated in Article 174.2 of the Russian Tax Code. The VAT payment mechanism depends on the purchaser of the services; there are two types:

- The purchaser is a legal entity or sole entrepreneur – in this case, a Russian purchaser or Russian selling agent pays the VAT to the budget as a tax agent.
- The purchaser is an individual (not registered as a sole entrepreneur) – in this case, the VAT is paid to the budget by a foreign service provider or by a foreign selling agent. Here, foreign entities have to register for VAT purposes in Russia through a special online portal (https://lkioreg.nalog.ru/en).

Russian tax authorities arrange access to the company's Online Personal Account

After registering for VAT, Russian tax authorities arrange access to the company's Online Personal Account within 30 working days. The account can thereafter be used to communicate with the Russian tax authorities and file tax returns and other documents.

If a foreign entity provides electronic services to Russian customers through a foreign entity engaged under Commission Agreements, Agency Agreements or other similar agreements, and this foreign entity participates directly with Russian customers (foreign intermediary), such foreign entity should be registered through the aforementioned online portal and pay VAT instead of the digital services provider. Nevertheless the foreign provider of digital services should also have an Online Personal Account on the internet portal of the Russian tax authorities.

foreign entity should be registered and pay VAT instead of the digital services provider

Extensive list of digital services

According to the Law, digital services are determined as services provided through the internet or other similar electronic networks. There is an extensive list of digital services covered by the law, including, inter alia:

continued on the next page

- provision of rights for use of software, databases
- sales of electronic content
- provision of trading platforms
- provision of domain names, web hosting services
- broadcasting of TV or radio channels
- provision of advertising services on the internet
- data storage and processing, etc.

It is important to understand the role of the foreign legal entity in the sales chain

It is important for the foreign legal entity to organise the sales of electronic services to Russian consumers accordingly. It is important to understand the role of the foreign legal entity in the sales chain (a service provider or an intermediary involved in the payment, for example, agent, commission agent, attorney, etc.) These circumstances influence their obligation to be registered for Russian VAT purposes.

Final amendments

In November 2017, the final amendments to No. 335-FZ were adopted. Accordingly, from 1 January 2019 foreign electronic service providers as well as foreign intermediary legal entities, which provide electronic services to Russian legal entities and sole entrepreneurs, must have an Online Personal Account on the above-mentioned special internet portal and pay VAT in respect of such supplies (B2B). The current mechanism of the tax agent in the provision of electronic services by foreign companies to Russian legal entities and sole entrepreneurs will be completely eliminated from 1 January 2019, except for cases where foreign legal entities provide electronic services through a foreign intermediary, which shall remain a tax agent.

from 1 January 2019 the obligation to pay VAT will be assigned to foreign providers regardless of who the buyer is

Thus, from 1 January 2019, the obligation to calculate and pay VAT will be assigned to foreign providers of electronic services, regardless of who the buyer is – an individual, a sole entrepreneur or a legal entity.

have to register no later than by 15 February 2019

Foreign legal entities providing electronic services to Russian legal entities and sole entrepreneurs have to register on the aforementioned internet portal no later than by 15 February 2019, if they are not yet registered with the Russian tax authorities.

Foreign companies must be prepared

We assume that foreign companies providing or participating in the provision of electronic services must be prepared to meet the requirements of Russian VAT legislation in 2018. They should take into consideration the rules for the VAT taxation of electronic services and consider following the steps below:

analyse activities

- Analyse the foreign company's activities to identify operations which may be subject to VAT on electronic services;

change business model

- Assess the possibility or need to change business model to comply with the VAT rules and mitigate tax risks;
- Consider modifying the mechanism for VAT payments in supply chains;

develop methods for separate accounting

- Analyse and develop methods for the separate accounting of input VAT for Russian companies that provide electronic services to foreign customers.

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Lower tax rates and different tax exemptions

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The VAT regulation of the Republic of Serbia is not completely harmonised with the VAT regulation of the European Union. The process of harmonising VAT rules is closely connected to the accession process of the Republic of Serbia to the EU. The European Council approved the opening of accession negotiations with Serbia on 28 June 2013. The negotiations officially started on 21 January 2014 in Brussels, at the first Intergovernmental Conference on the Republic of Serbia's accession to the EU. The large number of outstanding issues has been solved, but there are still certain differences between VAT regulations in the European Union and in the Republic of Serbia. Below we highlight the most significant ones.

Lower tax rates

transfer of the right of disposal over residential buildings

The most significant difference in comparison with the EU in terms of tax rates is associated with the transfer of the right of disposal over residential buildings, economically divisible units within those buildings, as well as over equity stakes on such properties. Regardless of social circumstances, these transfers are taxable at a lower tax rate.

Special tax procedure

turnover limit is significantly higher than the limits in EU Member States

For small taxpayers, the most significant difference of the Serbian regulation compared to the European regulation relates to the level of annual turnover of RSD 8,000,000 (roughly EUR 65,000), which is the limit for mandatory registration in the VAT system. With a few exceptions, this turnover limit is significantly higher than the limits in EU Member States, which range from EUR 5,000 to EUR 35,000.

Tax exemptions

tax exemptions in the trade of goods and services without the right to make preliminary tax deductions

The Law on VAT of the Republic of Serbia provides for the following tax exemptions in the trade of goods and services without the right to make preliminary tax deductions, which are not prescribed by EU law:

- Business activities of voluntary pension funds' management companies in accordance with regulations defining voluntary pension funds and pension plans;
- Transfer of land (agricultural, forest, construction sites – with or without structures), as well as the leasing of such land;
- Transfer of goods and services for which there was a tax payment obligation in the preliminary trade phase in accordance with the law governing property tax;
- Services in the area of science and the directly related trade of goods and services, provided by persons whose activity is not aimed at making a profit and who are registered for such activity.

The Law on VAT of the Republic of Serbia prescribes the following tax exemptions in trade of goods and services with the right to make preliminary tax deductions, which are not prescribed by EU law:

right to make preliminary tax deductions

- Services related to the international carriage of persons by air, provided the tax exemption for a non-resident airline applies only in the case of reciprocity;

carriage of persons by air

- Services related to the international carriage of persons by ship in river transport, provided the tax exemption for a non-resident enterprise engaged in the international carriage of persons in river transport applies only in the case of reciprocity;

carriage of persons by ship

- Trade of goods and services performed in accordance with the donation agreements concluded with the State Union of Serbia and Montenegro, or with the Republic of Serbia, if such agreement envisages that the taxes shall not be paid from the monetary funds received, or financed in part by monetary funds received, unless a ratified international treaty provides otherwise;

performed in accordance with the donation agreements

- Trade of goods and services in line with credit and/or loan contracts concluded between the Serbia and Montenegro State Union and/or the Republic of Serbia, and an international financial organisation and/or other state, as well as between a third party and an international financial organisation and/or other state, in which the Republic of Serbia appears as a guarantor and/or counter-guarantor, financed in part by donated funds, if such contract prescribes that the acquired resources will not be used for payment of tax expenses;

in line with credit and/or loan contracts

- Trade of goods and services based on international treaties, if such treaties envisage tax exemption, except for international treaties previously specified.

based on international treaties

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not incorporated into the Law on VAT of the Republic of Serbia

The following tax exemptions are prescribed by the EU's VAT regulation, but are not incorporated into the Law on VAT of the Republic of Serbia:

- supply of services and goods, by organisations whose activities are exempt pursuant to points (b), (g), (h), (i), (l), (m) and (n), in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition (Article 132 (1) o) of the Directive 2006/112/EC)

in connection with fund-raising events

by independent groups

- supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition (Article 132 (1) f) of the Directive 2006/112/EC)

tuition given privately by teachers

- tuition given privately by teachers and covering school or university education (Article 132 (1) j) of the Directive 2006/112/EC)

supply of staff by religious or philosophical institutions

- supply of staff by religious or philosophical institutions for the purpose of the activities referred to in points (b), (g), (h) and (i) and with a view to spiritual welfare (Article 132 (1) k) of the Directive 2006/112/EC)

transport services for sick or injured persons

- supply of transport services for sick or injured persons in vehicles specially designed for the purpose, by duly authorised bodies (Article 132 (1) p) of the Directive 2006/112/EC)

for the fuelling and provisioning of fighting ships

- supply of goods for the fuelling and provisioning of fighting ships, falling within the combined nomenclature (CN) code 8906 10 00, leaving their territory and bound for ports or anchorages outside the Member State concerned (Article 148 b) of the Directive 2006/112/EC)

importation of gas

- importation of gas through the natural gas distribution system, or of electricity (Article 143 (1) l) of the Directive 2006/112/EC)

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Main deviations in Slovak Act on VAT compared to sixth Directive

Author: **Lukáš Mokoš**

Slovakia has implemented the following options

Articles 199 and 199a cover the application of the domestic reverse charge mechanism on various taxable transactions. The application of these provisions is optional for Member States. Slovakia has implemented the following options:

- supply of construction works, including the handing over of construction works regarded as a supply of goods as well as the supply of goods with installation or assembly,
- supply of immovable property, where the supplier has opted to tax this supply,
- supply of goods provided as security by one taxable person to another in execution of that security,
- supply of immovable property sold by a judgment debtor in a compulsory sale procedure,
- transfer of allowances to emit greenhouse gases,
- supply of mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies under precondition of a minimal tax base of EUR 5,000,
- supply of integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end-user products under precondition of a minimal tax base of EUR 5,000,
- supply of cereals and industrial crops that are not normally used in an unaltered state for final consumption.

VAT Control Statement

was introduced in 2014

In accordance with Article 273, Member States may impose further obligations to prevent tax avoidance. The control statement was introduced in 2014 to this end. Generally, it is a detailed list of all issued / received invoices. The submission of control statement is generally connected to the duty to submit a VAT return, with some exceptions. The statement must be submitted within 25 days from the end of the calendar month.

The control statement shall contain data on the tax liability and tax deduction for the applicable tax period:

- taxable supplies with a place of supply in Slovakia, where the supplier is the person liable to pay the tax,
- received supplies with a place of supply in Slovakia, which incurs Slovak VAT,
- IC acquisitions,
- taxable supplies with a place of supply in Slovakia, where the local reverse charge mechanism is applicable,
- received supplies of services from another Member State or third state,
- any tax base / tax corrections.

fine of up to EUR 10,000

If the taxpayer fails to submit the control statement, submits it late, provides incomplete or untrue data in the control statement or fails to correct such by the deadline specified by the tax office, the tax office shall impose a fine of up to EUR 10,000. If this obligation is breached repeatedly, the office shall impose a fine of up to EUR 100,000.

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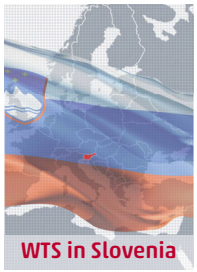
Amendments to Slovenian VAT system from 2019

Author: **Mateja Babič**



Slovenia introduced higher VAT rates five years ago as a temporary measure to fill up the empty state treasury, but the VAT rate of 22% has remained even in times of prosperity in the domestic economy. The new government has just been appointed and there are no talks yet to bring VAT back to 20% as it was before July 2013. Besides the 22% VAT rate there is also a 9.5% rate for goods and services that are used by the majority of population and fall into the group of essential goods and services for living.

Domestic reverse charge

Article 76a of the Slovene VAT Act

The famous Article 76a of the Slovene VAT Act states that a person liable to pay VAT is any taxable person to whom any of the following supplies are made:

- Supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods;
- Supply of staff engaged in the construction industry;
- Supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non-industrial waste, recyclable waste, part processed waste and certain goods and services;
- Additional domestic reverse charge applied to real-estate transactions when the seller (lessor or landlord) decides to use the option to apply VAT for the sale or lease of the real estate;
- Under Article 199a of Directive 2016/112/EC the domestic reverse charge also applies to the trading of greenhouse gas emissions. The scheme will be prolonged until the end of June 2022 due to the positive effects of the reverse charge system on preventing fraudulent activities.

Treatment of vouchers (implementation of Directive 2016/1065)

Slovenia will implement Directive 2016/1065 on voucher arrangements

From 1 January 2019 Slovenia will implement Directive 2016/1065 on voucher arrangements. Based on this directive, vouchers can be accepted as payment or part payment for the supply of goods or services.

Types of vouchers:

single-purpose voucher

- "Single-purpose voucher" means a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher;

multi-purpose voucher

- "Multi-purpose voucher" means a voucher, other than a single-purpose voucher, for which the VAT becomes chargeable when the goods are actually delivered or the services are actually provided. This means that before the actual purchase of goods or services it is not possible to define the subject of the supply or determine the tax base.

continued on the next page

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Establishing a Company in Central and Eastern Europe

The 2018 summer issue of WTS CEE Tax Bridge focused on the most important regulations of establishing a legal entity, especially a limited liability company (LLC) in 13 countries of the Central and Eastern Europe Region. It summarized the regulations in Austria, Belarus, the Czech Republic, Hungary, Latvia, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Turkey and in Ukraine.

If you are interested in the publication, please send us an email to the esther.lausek@wtsklient.hu email address!

Late interest on VAT

fixed interest rate of 3% p.a.

If a taxable person adjusts errors from previous tax periods in its current VAT return on a self-reporting basis, late interest will be charged at a fixed interest rate of 3% p.a. So far, interest has been charged at the European inter-bank interest rate.

Statement on real estate transfer

real estate transaction is normally VAT-exempt by law

The seller or landlord of the real estate can agree with the tenant (lessee, buyer) to apply VAT on a real estate transaction, which is normally VAT-exempt by law. Both taxpayers must be registered for VAT purposes and the tenant must be entitled to the full deduction of the input VAT. So far it has been necessary to submit an electronic statement on the intended taxable real estate transaction before the delivery to the tax authorities, or no later than one month after delivery.

the right to deduct input VAT will not be lost

From 1 January 2019 the right to deduct input VAT will not be lost for the tenant if the statement is not submitted in time. A preliminary agreement or provision in a lease or real estate sale agreement is sufficient evidence for the purpose of taxation in a real estate transaction.

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