

VAT Updates

Services

- General training
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- Revision of the implementation of the new rules regarding VAT and customs duties
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New model for Form 301

The National Agency for Fiscal Administration (ANAF) has issued Order no. 1498/2008, published in Official Gazette nr. 743/ 3 November 2008 to introduce changes to Form 301 - Special value added tax return.

The content of the form has been changed to reflect the recent amendments to the Fiscal Code introduced by Government Emergency Ordinance no. 127/16 October 2008.

Consequently, according to the new stipulations of the Fiscal Code, companies and individuals which are not registered for VAT purposes and perform intracommunity acquisitions of new means of transportation in Romania are required to submit the special VAT return before the vehicle is registered in the country, but no later than the 25th of the first month following that in which the chargeability of the operation occurs. If, in the same month, the taxable person carries

out more than one intra-community acquisition of new vehicles, that person can submit more than one VAT return for the same month, without ticking the "Amended Return" box.

The taxable person is required to keep a copy of Return 301, for their own records and the tax authorities may ask to see this during a tax audit.

The new Form 301 will be introduced starting with VAT declarations for the month of November 2008.

Advocate General Opinion C-371/07 (Danfoss and AstraZeneca, lunch free of charge)

The case concerns the VAT treatment of company canteen meals provided free of charge to business contacts and to staff in connection with meetings at the company.

The Advocate General (AG) considers the criteria relevant for

deciding upon the VAT treatment of these expenses is whether the expenditure is primarily incurred for business purposes and when it is either for the private use of the staff or otherwise for non-business purposes. Besides meals, the AG also addresses sandwiches in meetings, employees' clothing or transport to the place of work and employees' homes as examples.

For employee related expenses the decisive test seems to be the degree of the choice the employee has in respect of what kind of food or other kinds of consumables he or she consumes in a particular case. The less choice the employee can exercise the more predominant is the business connection of the expenditure. Concerning free meals for business contacts these should be deemed as primarily business related expenditure if they are served during meetings or breaks and they are intended to enhance the efficiency of these meetings.

If the criteria outlined in the Advocate General's Opinion are accepted by the ECJ, they may become a valuable addition to the "argumentation ammunition" in cases where the primary purpose and nature of expenditure serving both business and private needs is being contested.

Judgment C-291/07 (Kollektivavtalsstiftelsen TRR Trygghetsrådet, place of supply)

The judgment in the [Kollektivavtalsstiftelsen TRR Trygghetsrådet \("TRR"\) case](#) was issued by the European Court of Justice (ECJ) on 6 November 2008. The ECJ was requested to give an opinion on whether a person who carries out both economic activities and activities which are outside the scope of VAT can be required to self account for VAT (i.e. apply the reverse charge mechanism) in respect of services received from an overseas supplier, where those services were wholly used for the purpose of activities outside the scope of VAT.

TRR is a Swedish foundation which is involved in a range of activities which the Swedish authorities determined to be outside the scope of VAT (e.g. provision of severance pay and redeployment services to employees). In addition to these activities, it also provides certain VAT taxable services to businesses for which it is registered as a taxable person. Under EU law consultancy services such as these are taxed under the reverse charge mechanism in the Member State of the customer when supplied to taxable persons in other Member States. TRR argued it was not a taxable person when it imported these services.

The Swedish Tax authorities ruled that TRR was required to self account for VAT in respect of the

consultancy services received from a Danish company and used exclusively in connection with its non-economic activities. On appeal, the Swedish Court asked the ECJ to clarify whether a person was considered to be a "taxable person" for the application of the provisions of the VAT Directive (Council Directive 2006/112/EC) for all services rendered to it.

The ECJ confirmed that a person carrying out economic activities as well as activities outside the scope of VAT is deemed to be a "taxable person" and that it is obliged to self account for VAT on services received from suppliers from another EU Member State, even where those services are used only for activities outside the scope of VAT. The ECJ considered that this interpretation served the interests of simplicity of administration and increased legal certainty for traders operating across the internal market as it allows a trader to determine the place of supply of cross border services by confirming that its customer is a "taxable person."

This case will have significant implications for VAT registered operators in Member States, including Romania, who up to now have not been accounting for VAT on services purchased from service providers established in other EU Member States, if those services are related to activities considered to fall outside the scope of VAT (e.g. semi state bodies with statutory and commercial activities, managing holding companies etc.) Such entities will now need to

identify, track and account for local VAT on services which they may have previously considered as being not subject to Romanian VAT. Romanian entities which do not carry out any economic activities whatsoever will however not need to account for Romanian VAT on services purchased from service providers established in other EU Member States, but such services will typically be subject to VAT in the country in which the service provider is established.

Separately, Romanian entities which supply services to customers established in other Member States will need to ensure that Romanian VAT is not charged if the customer is a taxable person, i.e. if it carries on at least some economic activities. However, if the customer established in the other EU Member State does not carry out any economic activities whatsoever, Romanian VAT may need to be charged by the Romanian supplier of services.

About us

Our team consists of more than 100 Romanian and international consultants, with command of local and international legislation, organized to be able to react at short notice to requests for tax assistance covering a wide range of issues.

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