



Indirect Taxnewsflash

KPMG IN ROMANIA

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Recent developments at European Court of Justice and a new tool developed by KPMG

Services

- Reviewing the VAT implications for each line of business and identifying opportunities for improving VAT cashflows;
- Reviewing the VAT implications of the operations carried out and the VAT position with a view to identifying potential risks and penalties that might be incurred;
- Assistance with respect to the VAT treatment of specific operations;
- Assistance during VAT audits;
- Assistance with respect to strategies for VAT planning;
- Assessing the VAT implications of restructuring operations (e.g. mergers and acquisitions, transfer pricing, commissioner structures);
- Assistance with registration for VAT purposes in other EU Member States, as well as related VAT compliance services;
- Assistance with preparing and submitting VAT refund claims both in Romania and in other EU Member States, as well as in non-EU countries.

This newsflash brings to your attention two important cases from the European Court of Justice and a tool designed by KPMG to help taxpayers gain a better control and risk management over their VAT compliance obligations, as of 1 January 2010.

Supply of land occupied by a dilapidated building – Decision issued by the European Court of Justice in case Don Bosco Onroerend Goed BV(C-461/08)

This case involved the acquisition of a plot of land occupied by two dilapidated buildings. Don Bosco BV, a taxable person registered for VAT purposes, planned to have those two buildings completely demolished so that it might then construct new buildings on the land that had thus become available. The demolition was agreed to be conducted by the vendor but the cost was to be supported by Don Bosco (i.e. through an increase in the selling price).

Three main questions arise in this respect:

(1) does this operation qualify as a supply of building and the land it stands on or simply as a supply of land;

(2) are the supply of the building/land and the demolition work to be considered two distinct and independent supplies;

(3) does the supply of land occupied by a building that is to be demolished in order to be replaced by a new construction and whose demolition had already begun before the supply took place qualify as an operation exempt from VAT.

The Court argued that, since, eventually, the aim of the transaction was to supply land that has not been built on and not to supply building and the land it stands, the operation would qualify as a supply of land that can be built on (i.e. as defined by each Member State, including Romanian legislation). The supply of the existing building would qualify as merely accessory to that supply as, objectively, they form a single, indivisible economic supply which would be artificial to split.

Having this in mind, the next question that arises is whether the supply of property and the demolition of the buildings are to be considered two distinct and independent transactions or a single complex transaction

comprising several elements. The Court argued that, for VAT purposes, the supply of land on which a dilapidated building stands and the demolition of the building must be considered as a single transaction for VAT purposes (i.e. supply of land which can be built on).

In these circumstances, the Court replied that such a transaction, viewed as a whole, does not fall within the VAT exemption provided by the VAT law for supplies of buildings or part of buildings, regardless of how far the demolition of the old building had progressed.

In conclusion, the VAT exemption provided by the law does not cover the supply of land still occupied by a dilapidated building that is to be demolished and replaced by a new building and whose demolition, paid by the vendor, had already begun before the actual supply took place.

We were expecting this judgment to bring more light with respect to the VAT treatment applicable in the specific case of acquisition of land with dilapidated buildings. From our previous experience, Romanian tax authorities required the adjustment of input VAT related to the building itself. Even though it clearly results from the arguments of the Court that the acquisition of building is merely accessory to the acquisition of land, the restrictive approach of the Court in the conclusions of the case does not bring any clarification regarding the issues which the Romanian taxpayers are confronted with. However, with proper planning of such

transactions, we believe that related VAT costs could be mitigated. For more information regarding this case, please contact KPMG's indirect tax professionals.

Hearing - X fiscale eenheid Facet v Facet Trading (C-536/08, C-539/08) – automatic deduction of VAT

The present case addressed to the European Court of Justice concerns the taxpayer's right to **immediately** deduct the VAT due in one Member State, for an intra-Community acquisition. We will keep you posted with further developments.

VIES validation tool

Based on the draft legislation issued by the Romanian tax authorities, in order to be able to apply the B2B place of supply rules, the supplier would be required to prove that the client is a VAT registered person. In this respect, EU taxpayers would need to validate the VAT registration numbers that are provided to them by their business partners in other EU Member States. In order to be able to help its clients meet their due diligence responsibilities, KPMG has developed a desktop software application, the VIES Validation Tool („VVT”). The VVT is designed to perform bulk validation of VAT registration data (for all 27 EU Member States), with the EU Commission's VIES database, allowing businesses to confirm the accuracy of their EU customer/supplier master-data in a simple yet effective fashion. The VVT works with a simple download of customers' (or suppliers') VAT

Registration numbers from existing systems. The information is uploaded and registration numbers are validated in bulk, allowing you to export the results, including a confirmation number from the Commission for each number validated. The use of VVT can assist businesses with:

- correct application of the reverse charge for supplies to business customers in the EU
- accurate reporting for both goods and services in the Recapitulative Statement;
- mitigating possible risks associated with Missing Trader fraud;
- better control over self-billing arrangements.

The VVT has been designed to require a minimal set up and configuration, and provides a simple, low cost technology solution to help businesses better manage risk and demonstrate “reasonable care”. VVT is available for a single, one off perpetual license with no ongoing costs.

For clients seeking to use the tool for their Romanian business, the cost of the tool is a one off license fee of 2.500 GBP, plus VAT, if applicable. For clients seeking to validate their data across their EU business, there is a one off license fee of 5.000 GBP, plus VAT if applicable.

If you have any queries on the VVT, then please do not hesitate to contact us.

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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