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The European Commission proposes a significant reform of the VAT system in the EU

The present VAT system for cross-border transactions in the EU which has been in place for almost a quarter of a century, was supposed to be applied only on a transitional basis. This present system creates obstacles for efficient functioning of the EU Single Market and leaves the door open to fraud. Therefore, following the announcement of the VAT Action Plan in 2016, the European Commission recently presented the long-awaited amendments to the EU VAT Directive.



Elvira Ungerová
eungerova@kpmg.sk
+421 915 758 807

Fundamental principles of the definitive EU VAT system

The draft amendment to the EU VAT Directive of 4 October 2017 is the first legislative step introducing the fundamental principles of the definitive VAT system for cross-border B2B trade with the following objectives:

- **Tackling fraud**

In the new definitive single EU VAT area, VAT should be charged not only to domestic but also to cross-border trade between businesses. Currently, cross-border supplies of goods are exempt from VAT. The proposed change came in reply to the weak points of the current VAT system, such as the susceptibility to fraud.

- **One Stop Shop**

The proposed One Stop Shop should bring simplification to companies in dealing with their VAT obligations. The aim is to enable traders to declare VAT using a single online portal and thus preclude the obligation to register for VAT in all the EU member states where they perform taxable transactions. The EU member states will then pay the VAT to each other, as is already the case for supplies of digital services to final consumers.

- **Greater consistency**

The definitive VAT system in the EU should be based on the principle of 'destination', applying the VAT rate of the respective EU member state of 'destination'.

- **Less administrative burdens**

Simplification of invoicing rules should allow suppliers to issue invoices according to the rules of their "home" country even when trading across borders.

After implementing the new VAT system, companies will no longer have to file so called EU Sales Lists – lists of cross-border transactions with their tax authority.

The next legislative step should follow in 2018, when the European Commission plans to introduce detailed technical provisions for the actual implementation of the definitive VAT regime. The definitive EU VAT system should enter into application in 2022.

Quick fixes

The recent proposal contains also so called 'quick fixes' with the aim to improve the current VAT system. These provisions, expected to enter into force until 2019, bring changes in the following areas:

VAT identification number: Requirement of a valid VAT identification assigned in another EU member state should represent additional substantive condition for the application of the VAT exemption in respect of an intra-EU supply of goods. This condition is already contained in the Slovak VAT Act.

Chain transactions: Uniform criteria and appropriate legislative improvements focused on increasing legal certainty and harmonisation of application of VAT rules when determining the VAT treatment of chain transactions should be introduced.

Call-off-stock: Application of so called call-off-stock simplification should be made possible only if the transaction is taking place between two certified taxable persons.

The draft amendment to the EU VAT Directive introduces also a new concept of a **Certified Taxable Person** – a category of trusted businesses that should benefit from much simpler and time-saving rules. Similar criteria to those applied regarding the Authorised Economic Operator (AEO) according to customs legislation should be used for granting the certified taxable person status.

A modification of the VAT Implementing Regulation is also anticipated with regards to the documentary evidence required to claim an exemption for intra-EU supplies of goods.

The proposed amendments to the EU VAT Directive introduce significant changes in the application of the VAT rules in the EU. Therefore, attention should be paid to these changes already at this stage, at the beginning of the process of forming the definitive VAT system.

Changes in the regulation of health protection at work are coming into force

With effect from 1 December 2017, the Slovak National Council has passed the amendment to Act No. 355/2007 Coll. on protection, promotion and development of public health and on amendment of certain acts. This amendment modifies and cancels selected obligations of the employer in the area of health protection at work.



Marian Dzuroška
mdzuroska@kpmg.sk
+421 915 758 936



Miroslav Kober
mkober@kpmg.sk
+421 2 5998 4111

Changes will affect, in particular, the following areas:

- obligation of employers to secure an occupational health service for their employees by a permanent contractual relationship is replaced by a clarification of the existing obligation of employers to ensure (in cooperation with the occupational health service) the assessment of health risks for employees arising from their exposure to a factor of work and the working environment;
- public health inspectorates should prioritize during their inspections of the workplace such health risk assessments before employer's contracts with the occupational health service;
- annual assessment of the health risk will be mandatory only in workplaces where employees carry out hazardous works (3rd and 4th category). For works of 2nd category, the employers will be obliged to assess the health risk at work per each 18 months. In other cases, the employer will be obliged to prepare the health risk reassessment only upon a change in working conditions that could have an impact from health risk point of view;
- obligation of the employer to maintain records of employees based on categories of work will only apply to 2nd, 3rd and 4th category; in this relation, the amendment introduces also the obligation for the employer to notify the respective public health authority annually by January 15, in an electronic form, specified data concerning employees engaged in work classified in 2nd category (however, this notification obligation will apply only after 1 July 2018).

Relevant changes should result also in decrease of financial costs of employers. Scope of the employer's obligations in this area will depend, in particular, on the actual health hazards and the hazardous nature of the work environment.

Lease Agreements and VAT – falling to be treated as a supply of goods or service?

On 4 October 2017, the Court of Justice of the European Union (CJEU) released its judgment in the case C-164/16 „Mercedes Benz Financial Services UK Ltd.”, concerning the criteria for determination whether a lease agreement falls to be treated as a supply of goods or services for VAT purposes. The fact that purchase of the car is optional in formal terms is not, according to the CJEU, sufficient for treating a leasing product as a supply of service.



Elvira Ungerová
eungerova@kpmg.sk
+421 915 758 807

The company Mercedes-Benz Financial Services UK offers three types of leasing products. Leasing based on the first type of agreement excludes any transfer of ownership to the vehicle and is treated as a supply of service. The second type of agreement contains a clause relating to the transfer of ownership, whereby the ownership of the goods is acquired by the lessee automatically if performance of the contract proceeds normally, over the full term of the contract. The company treats this product as a supply of goods.

The third type of agreement, which allows customers to postpone choosing between leasing and purchase until after the vehicle has been handed over to the lessee, became the subject of the dispute.

Subject of the dispute - leasing contract with an option to purchase

CJEU was dealing with a question whether Article 14 (1) Letter b) of the EU VAT Directive, stating that *the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment* is considered as a *supply of goods*, is to be interpreted as applying to a leasing contract with an option to purchase.

According to SDEU, the above mentioned Article of the EU VAT Directive is applicable if:

- the lease agreement contains a clause expressly relating to the transfer of ownership of the goods from the lessor to the lessee, and
- it is clear from the terms of the contract, as objectively assessed, that ownership of the goods is intended to be acquired automatically by the lessee if performance of the contract proceeds normally, over the full term of the contract.

The *first condition* can be viewed as satisfied where the agreement contains an option to purchase the leased asset.

CJEU argues that the *second condition* is not met where the contract contains an option either to acquire the goods, or to return them to the lessor, or to extend the lease. Such types of leasing products with an option to purchase should in general be considered as a supply of service. However, CJEU has pointed out exceptions from such treatment and mentioned conditions under which handing over of the vehicle to the lessee, based on a lease agreement with an option to purchase, should be treated as a supply of goods. The conditions are as follows:

- the aggregate of the contractual instalments will correspond to the market value of the goods, including the cost of financing, and
- the lessee will not be required, as a result of exercising the option, to pay a substantial additional sum.

In other words, handing over of the vehicle based on a lease agreement, from whose financial terms it can be inferred that exercising the option to purchase appears to be the only economically rational choice that the lessee will be able to make, should be treated as a supply of goods. Under such circumstances, a lease agreement does not fall to be treated as a supply of service.

According to the relevant provisions of the Slovak VAT Act, handing over of the goods to the lessee based on a lease agreement under which the lessee is obliged to acquire ownership title to the goods, at the latest upon the payment of the last installment, is treated as a supply of goods. If an option to purchase the goods is agreed between the contractual parties, the leasing product should be, under the currently applied interpretation, considered as a supply of service. When assessing the VAT implications of particular lease agreements, it is necessary to consider potential impact of additional conditions set out in the respective CJEU judgment.

EU finance ministers approve directive introducing mechanism for tax dispute resolution

At October meeting the Economic and Financial Affairs Council (ECOFIN) has approved a directive which introduces new rules for resolving disputes related to double taxation.



Marianna Dávidová

mdavidova@kpmg.sk
+421 907 745 029

One of the main problems that businesses operating across borders currently face is double taxation. There are mechanisms already in place that deal with the resolution of double taxation disputes. Specifically it concerns the Mutual Agreement Procedures which are foreseen in Double Taxation Conventions as well as in the Union Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. However, in practice there are cases that are prevented from entering existing mechanisms and get stuck without the taxpayer being informed about the reasons or that are not resolved at all. Moreover, the traditional methods of resolving disputes no longer fully fit with the complexity and risks of the current global tax environment.

The proposed directive aims at broadening the scope and improving procedures and mechanisms in place. On the one hand, the member states are provided with more detailed procedural provisions for the elimination of double taxation disputes, but at the same time they are left with sufficient flexibility to agree between them on a mechanism of their choice. The situation for the taxpayer is improved in several aspects. According to the proposed directive taxpayers get enhanced rights to enforce – subject to certain criteria – the setting up of resolution mechanisms, will be better informed about the procedure and can rely on the member states being forced to achieve binding results. The proposed directive adds an explicit obligation of result for member states as well as a clearly defined time-limit.

The proposed directive defines the following three key procedural stages:

The complaint stage

Mutual agreement procedure

Dispute resolution procedure

The directive allows for a mutual agreement procedure initiated by the complaint of the taxpayer, under which the member states shall freely cooperate and reach an agreement on the double taxation dispute within 2 years. If the mutual agreement procedure fails, it automatically leads to a dispute resolution procedure with the issuance of a final mandatory binding decision by the competent authorities of the member states involved.

An important date for member states becomes 30 June 2019. By that deadline, all member states shall bring into force the directive into their national law.

In brief

The Amendment of the Commercial Code, Tax Code, the Amendment of the Act on the excise tax on tobacco products and the Amendment of the Act on excise tax on mineral oil were signed by the President and published in the Collection of Law.



Daňové a právne oddelenie

kpmg@kpmg.sk
+421 2 5998 4111

- The Amendment of the Commercial Code, Tax Code, the Amendment of the Act on the excise tax on tobacco products and the Amendment of the Act on excise tax on mineral oil were signed by the President and published in the Collection of Law.
- The amendment of the Income Tax Act and the Amendment of the VAT Act were approved for the second reading. It is expected that the next steps of the legislative process will be scheduled for the November session of the Slovak Parliament.
- Ministry of Interior is replacing vulnerable certificates for the electronic signature - large-scale cancellation of certificates issued prior to 24 October 2017 took place on 31 October 2017. From that day, a holder of the ID card with the electronic signature can request replacement of the certificate at any department of documents. In order to replace the certificate, it is necessary to personally submit the ID card with a chip.

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www.kpmg.sk

Tel.: +421 2 5998 4111

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