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Proposed Amendment to the VAT Act

The MF SR has submitted into the inter-ministerial commentary procedure a draft Amendment (“the Amendment”) to the Act on Value Added Tax (“the VAT Act”). The proposed Amendment introduces two significant changes which we analyze below. Please note that this legislation may still be subject to change and therefore any response to it should await verification of its approved wording.

VAT refund in the event of non-payment for supply of goods or services

Following the interpretation of Council Directive 2006/112/EC provided by recent EU Court of Justice case law (for example, C-246/16 Di Maura), it is proposed that with effect from 1 January 2021 the Slovak VAT Act allows correction of the tax base and related VAT in the case of outstanding receivables. The Slovak Republic is one of the last EU jurisdictions to permit this option.

The proposed wording outlines the taxpayer option to correct VAT charged on a supply if a customer fails to fully or partially pay them for the supply of goods or services within Slovak territory and the receivable becomes irrecoverable. It precisely defines situations when a receivable is considered

irrecoverable for the purposes of applying the correction of the tax base and this follows several legal frameworks for debt recovery, such as insolvency proceedings, distraint proceedings, discharge in the form of a repayment schedule, winding-up of a legal entity without a legal successor or inheritance proceedings on death of a natural person. Taxpayers will have three years to perform the correction, although the period is suspended during proceedings resulting in declaration of the status of irrecoverable debt (e.g., insolvency, distraint).

On the other hand, the Amendment also proposes mechanisms to defend against both possible tax evasion and misuse of the concept for which the term “VAT bad debt relief” has been established in English. It will not be possible to correct VAT applied with respect to supply of goods and services if the debtor was a close associate of the taxpayer (e.g., employees, statutory representatives, family members), if the supply took place after the debtor was declared insolvent, after publishing a resolution for granting protection from creditors or if the debtor was included in the list of tax debtors. Moreover, it will not be possible to correct VAT if, as at the date

of supply, the taxpayer knew or may have known that the debtor would fail to fully or partially pay the taxpayer for the supply.

The possibility of correcting the paid tax is conditional on producing a precisely detailed corrective document which is dispatched to a customer/debtor. It is proposed that to mirror this requirement, the VAT Act is also supplemented so that the customer is obliged to correct deducted tax after accepting such a document on correction of the tax base, following their irrecoverable liability to the supplier.

After correction of the tax base, if the VAT payer accepts any payment in respect of the receivable (even if assigned) due to it being irrecoverable, they will be obliged to perform a retrospective correction and pay the related VAT amount back to the state budget.

On the basis of this legislation, from January 2021 the Slovak Republic will join the majority of countries which make it possible to apply for a VAT correction on unpaid receivables, subject to compliance with its conditions. Prior to the new legislation becoming effective, the doctrine of direct effect of the European VAT Directive should still be applicable.

This means that during the interim period it will remain possible to apply for a VAT correction on unpaid receivables in the Slovak Republic, theoretically without domestic regulation due to the lack of conditions through which corrections could be regulated.

The new legislation limits the submission of such applications by time. Therefore, taxpayers who know that they will not meet its relatively restrictive conditions, still have several months before the end of the year within which to take steps to correct such VAT.

E-commerce in goods and services

The current rules for sales via mail order within the EU are administratively demanding and fail to fully reflect the principle of taxation of goods at the place of their consumption. The Amendment implements EU legislation on sales via mail order and distance supplies of services.

The following changes are introduced:

- ▶ Definitions of distance sales of goods within the territory of the EU and distance sales of goods imported from third countries are introduced, for which the place of supply of distance sales of goods is the place where the goods are located when dispatch or transport of the goods to the customer ends.
- ▶ The Amendment proposes establishing a special place of supply of distance sales of goods within the territory of the EU and with respect to supply of certain digital services to non-taxable persons if the total value of supplies per (current and previous) calendar year does not exceed €10,000. The special place of supply in this case will be where the dispatch or transport of the goods starts, or alternatively the place where the service supplier has its registered office or establishment.
- ▶ The Amendment introduces the concept of taxable persons who facilitate the supply of goods within the territory of the EU, for suppliers not established in the EU, to customers who are non-taxable persons, or in the event of supply of distance sales of goods totaling €150 from third countries where the goods are supplied via an electronic portal/platform. In this case, the fiction will apply that a taxable person, operating the electronic portal, accepted the goods and subsequently delivered them to a customer within the territory of the EU. The transport will be attributed to supply of goods made by this taxable person to the final customer and at the same time, the supply of goods made by the original supplier to this taxable person within the EU will be exempt from VAT, with an entitlement to claim a tax deduction.

▶ The Amendment proposes that voluntary special arrangements for applying tax, as referred to in Articles 68a and 68b of the VAT Act, are extended as follows:

- ▶ Article 68a will apply to supply of services by a taxable person not established within the territory of the EU to final consumers who are non-taxable persons. In addition to digital services, these services will include other services with a place of supply in the state of consumption, in accordance with Article 16 of the VAT Act.
- ▶ Article 68b will include distance sale of goods within the territory of the EU, supply of services with the place of supply in the state of consumption by a taxable person not established in this state and the so-called certain domestic supply of goods via an electronic platform by a supplier established outside the EU if the transport of goods starts and ends in the same Member State.
- ▶ Article 68c will cover distance sale of goods which are imported from a third country, the value of which does not exceed €150 and which will not be subject to excise duty.
- ▶ Through special arrangements, suppliers will be able to fulfill their obligation to file tax returns and pay taxes only in one Member State, known as the Member State of identification ("One Stop Shop"). This will constitute a material change compared to the current rules, under which persons carrying out sales via mail order must be registered in all EU Member States in which supplies exceeded the set limit.
- ▶ The Amendment repeals the tax exemption for imports of consignments with a value not exceeding €22, as this provision distorted competition between EU suppliers and suppliers established outside the EU.

The provisions of the Amendment should enter into force on 1 January 2021, with the exception of transitional provisions regarding the timely notification of the intention of a taxable person to apply any of the special arrangements for services, e-commerce in goods and import of small consignments from third countries, all of which should enter into force on 1 October 2020. We will keep you informed of further developments.

If you would like to learn more about the upcoming Amendment, do not hesitate to contact us.

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