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MANDAT news

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APPLICATION OF THE VALUE ADDED TAX GUARANTEE MECHANISM

Methodology Guidance on the Application of the Value Added Tax Guarantee Mechanism

In connection with the amendment to the VAT Act, the Financial Directorate of the Slovak Republic issued a new methodological guidance on the VAT guarantee mechanism, effective from 1 January 2018. One of the main criteria for the application of this mechanism is deleted from the VAT Act. ■

What is the mechanism of application of the value added tax guarantee?

It is a mechanism under which the customer is liable for their supplier's tax if the supplier has not paid the tax on the invoice and the customer knew at the time of origination of the tax liability that the tax, in whole or in part, would not be paid. In this case, the tax administrator is entitled to claim the VAT from such customer.

The customer has paid the VAT to their supplier based on the invoice and then they "claimed" it from the state through a VAT tax return. If the tax administrator subsequently forfeited the VAT claimed by the customer using this mechanism, the result was a loss for the customer. ■

The current wording of the Act contains the following conditions for the application of the mechanism.

According to **Section 69(14)** of the VAT Act, the taxpayer, to whom the goods or service is or is to be delivered domestically, is liable for the tax for the previous stage, i.e. the customer is liable for the tax of the supplier if:

- **The supplier has not paid the tax on the invoice; and**
- **The taxpayer (customer) knew or should have known or could reasonably have known at the time of origination of the tax liability that the tax, in whole or in part, would not be paid.**

When both the conditions are met **at the same time**, the customer becomes legally liable for the tax not paid by the supplier.

At the same time, the Act lists reasons elaborating on the second point, i.e. the knowledge of the customer of the supplier's failure to pay the tax to tax authorities. The customer therefore should have known or could have known that the tax would not be paid, specifically:

- a/ the consideration for the fulfilment specified in the invoice is, without economic justification, unreasonably high or unreasonably low, or**
- b/ at the moment of origination of the tax liability, a statutory body of the supplier or a member of the statutory body of the supplier or a shareholder of the supplier, i.e. of the tax payer who supplies the goods or the service, was the statutory body of the customer or a member of the statutory body of the customer or the customer's shareholder.**



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APPLICATION OF THE VALUE ADDED TAX GUARANTEE MECHANISM

If any of the listed conditions is met and at the same time the tax has not been paid to the tax administrator, the customer becomes liable for the tax unpaid by the supplier.

The good news is that the third condition has been deleted from the VAT Act, specifically that the taxpayer performed the taxable transaction with the payer during the period when the respective payer was included in the list according to Section 69(15) of the VAT Act.

The list in question included i.a. companies that became insolvent involuntarily (i.e. those that did not perform fraudulent transactions). The customers, quite logically, then refused to trade with the companies included in the list, which then caused even worse financial problems to the affected entities.

By its original approach, the tax administration actually caused fatal problems to these entrepreneurs. Slow updates of the lists also contributed to this effect.

In this connection, the tax administration issued a guidance proposing to customers trading with the companies included in the list, to pay the VAT not to the supplier but directly to the account of the tax administration. From the legal point of view, however, this was not a legal act between the supplier and the customer.

Due to this reason, this condition was deleted from the VAT Act making the respective guidance void as well.

Thanks to this amendment, the situation of these entrepreneurs is easier, since many entities included the respective conditions in their contractual terms.

The exact wording of the current VAT Act:

(14) The payer to whom the goods or service are or is to be supplied domestically is liable pursuant to Section 69b for the tax on the preceding stage listed on the invoice if the supplier has not paid the tax on the invoice or has become incapable of paying the tax and the payer knew or had sufficient reasons to know that the entire tax or part of the tax on the goods or service would not be paid. A sufficient reason for the payer to know or should know that the entire tax or part of the tax on the goods or services would not be paid is the fact that

- (a) the consideration for the fulfilment specified in the invoice is, without economic justification, unreasonably high or unreasonably low,***
- (b) at the moment of origination of the tax liability, a statutory body, a member of the statutory body or a shareholder of the payer supplying the goods or the services was its statutory body, member of the statutory body or its shareholder.***



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NOT TO BE MISSED

Important dates

Overview of important dates in the Januar 2018 can be found on our website: <http://www.mandat.sk>

ABOUT US

The companies **MANDAT CONSULTING, k.s.** and **MANDAT AUDIT, s.r.o.** were founded in 2004 as tax advisory and auditing companies. Since their establishment, they have been providing small, medium-sized and companies active in Slovakia with services in the field of tax consultancy, audit and accounting. Long-lasting cooperation with foreign advisory companies hand in hand with the competence of Slovakian tax advisors and auditors enables us rendering our service to the clients originated from abroad.

In present time, 41 well trained members of our staff are at the disposal to our clients.

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