

Breaking Tax News

Stricter audit measures in relation to VAT deduction rights

We would like to draw the attention of our Clients to the new guideline (number 3010/2015) released by the Hungarian Tax Authority regarding the validation of the VAT deduction right of taxpayers in relation to the input VAT. The guideline sets forth new measures, which will be applied during the course of a Tax Authority audit.

The essential aim of the guideline – besides clarifying certain issues in relation to the practice of the Tax Authority related to correction invoices – **is the applicability of more stringent measures impacting the recipient of the invoices, in order to provide verification** of due care related to the deductibility right of the taxpayer. Considering that on the basis of the consistent practice of the Court of Justice of the European Union, **the VAT deduction right may not be denied solely on the basis of the malpractice of the taxpayer issuing invoices**, if the recipient of the invoice did not and could not have information about this, the stringent measures introduced by the guideline appear to contradict the usual practice of the Court of Justice of the European Union. The Tax Authority made assessments in the past, which involved non-compliance (e.g. failing to verify the background of the service provider). However, **this is the first time that the Tax Authority has specified all its requirements in connection to the validation of the VAT deduction right in a guideline.**

If any indication of tax evasion is identified, not only in connection with the given transaction but also within the respective business sector then the Tax Authority sets forth specific requirements which the taxpayer is obliged to meet. The recipient of the invoice is obliged to take reasonable measures in order to avoid being implicated in tax evasion. In addition, the recipient of the invoice is **required to gather detailed information about the other party** (the service provider).

The Tax Authority has set forth that the recipient of the invoice is obliged to ascertain the solvency of the issuer of the invoice, the identity of the provider carrying out the work and its respective competence. This requirement is particularly relevant if the fulfilment of the contract requires special expertise or the service is of confidential nature. **The Tax Authority also prescribes that during the evaluation of various proposals, taxpayers should take into consideration the reliability of the suppliers.**

The Tax Authority also sets forth certain measures related to the period of the fulfillment of the services. Taxpayers receiving the invoices **should ascertain that the service provider fulfills the rendered service in line with the concluded contract.** Taxpayers **should check the quantity and quality** of the delivered products and any potential damages originating from delivery. In addition, in certain cases the taxpayer should arrange for insurance of the acquired products. In order to settle invoices **the taxable person must clarify whether the service provider is a legal entity and its representative is authorized to act.** During the course of the settlement of the invoice, the recipient of the invoice must

ascertain that the partner (seller, service provider) has fulfilled its obligations. Furthermore, it should also be verified that the purchase price has been paid to the authorized person.

According to the Tax Authority, the recipient of the invoice may be informed about the respective business sector's risks relating to tax evasion by means of news received from the media or from the Tax Authority and other authorities. An additional indication of potential problems with the service provider may occur if the taxpayer becomes aware of transactions that differ from the usual procedures in terms of business operations and these deviations cannot be supported by acceptable business explanations.

In order to comply with the requested measures, the Tax Authority operates specific databases on its website. From this source, taxpayers may gather the **relevant information about whether:**

- The service providers' tax number is valid
- The issuer of the invoice has any employees and if yes how many
- The issuer of the invoice has an EU VAT number
- The issuer of the invoice has a significant amount of outstanding tax liability or any outstanding tax liability due over 180 days
- There is an enforcement procedure in progress against the issuer of the invoice
- The issuer of the invoice has or had any illegal employees
- The issuer of the invoice is listed in the database of taxpayers without any public debt
- The issuer of the invoice is listed in the database of distinguished taxpayers

The public and authentic company registers and the public chamber records can also serve as information source for taxpayers.

However, gathering the appropriate information is not sufficient to fulfil the requirements of the Tax Authority. In order to support due care **the documentation of the gathered information is also essential.**

The guideline clearly states that in the case of a Tax Authority audit the documents supporting the business controlling procedure (regulated by the Hungarian VAT Act) should be made available to the Tax Authority. In cases where any indication of tax evasion arises in relation to the given transaction or the respective business sector, the recipient of the invoice is responsible for taking additional measures compared to the usual ones, to ensure the validation of the VAT deduction right.

The guideline does not provide an itemized list of the required additional measures to be taken by the recipients of the invoices. However, it does set forth that **the taxable person is responsible for being aware of all circumstances affecting the respective business sector** and the given transaction when determining the measures to be taken during the course of the information gathering process in relation to the business partner, the received invoices and the fulfillment of the services.

Therefore, the taxpayer is required to choose and document the scale, extent and means of the reasonable measures applied in line with the circumstances of the respective business sector and the given transaction.

We would be pleased to provide assistance to our Clients throughout the process set forth above.

Our work would include the development of internal business controlling procedures and respective documentation. Furthermore, we would also assist the Clients with the modification of previous engagement agreements and the drafting of new template agreements which may serve as an effective tool in protecting against the suspicion of tax evasion.

Should you have any remarks or questions regarding the above, please contact our professionals:

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