

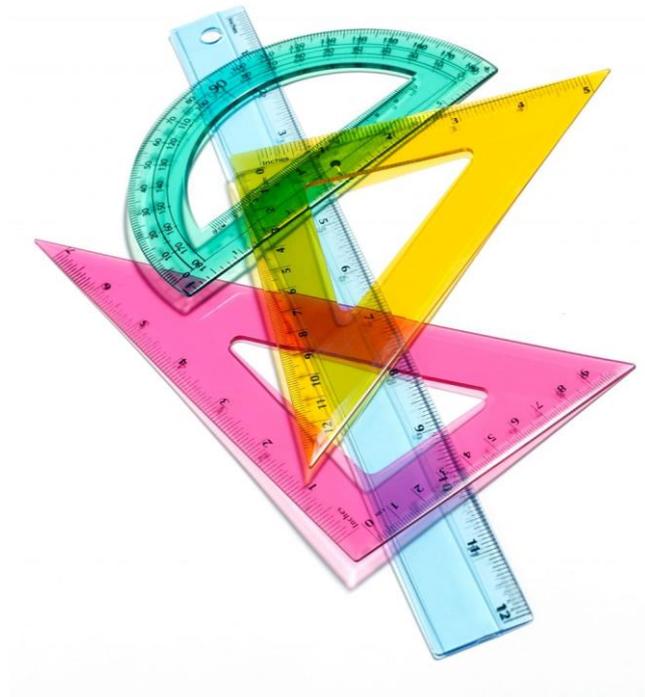
Manufacturing Alert

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Articles in this issue:

Romania aligns with European standards in terms of VAT treatment of moulds and production equipment

The authorities have taken a positive approach on the VAT treatment for tooling contracts. The Bucharest Court of Appeal has issued one final decision specifying that VAT for the acquisition of tooling is refundable. In addition, the Norms for applying the New Fiscal Code state that making available tooling equipment to subcontractors is outside the scope of VAT (there is no need to self-collect VAT).



Romania aligns with European standards in terms of VAT treatment of moulds and production equipment

In the automotive industry and manufacturing sector, contracted goods are often produced using equipment, moulds, tools, etc. made available to suppliers by the buyers of goods. The ownership always belongs to the contracting companies and they do not charge any fee to the suppliers. Generically, the equipment, moulds and tools are known as tooling.

In Romania, making available the tooling to subcontractors is problematic from a tax perspective. Romanian authorities had considered that this transaction is a free of charge supply of goods or services and self-charge VAT was required. Thus, the VAT for tooling acquisition became a non-recoverable cost for the owners.

Deloitte considered that the authorities' interpretation was not in line with the VAT principles and informed the European Commission, which began to investigate the case.

Furthermore, the Bucharest Court of Appeal recently issued a final ruling that invalidates the authorities' interpretation in relation to the VAT treatment in the case of tooling. The Court decided that self-charge is not required and VAT must be refunded. Therefore, the companies that appealed the decisions of the authorities on this matter have better chances to recover VAT.

In this context, the Norms for applying the New Fiscal Code refer to tooling contracts. It is stated that if the equipment is used exclusively in relation to the supply of services to that taxable person owning the equipment, the operation falls outside the scope of VAT. Consequently, the operation of making the tooling available to the supplier will no longer be considered a VAT charged self-supply and thus the tax will become recoverable.

The norms' provisions do not cover the situation in which the supplier sells goods manufactured with the help of available tooling rather than the service supplier.

In order to avoid any practical difficulties regarding the VAT treatment of these operations, we recommend that companies request an official opinion from the tax authorities for situations when the Romanian contractor supplies goods instead of services.

Another important aspect to consider is that those entities which have been refused VAT refunds for tooling acquisition may request interest for late payment. This applies to those companies that have taken legal actions against the decision to reject a VAT refund and will now attain a positive outcome.

To support these ongoing cases, we recommend using the jurisprudence of the Court of Appeal and change in the norms for applying the New Fiscal Code. Our specialised team is at your disposal for assessing the current situation and identifying a VAT recovery strategy for tooling acquisition.

For further questions regarding the aspects mentioned in this alert, please contact us.

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