

VAT registered purchasers made liable for supplier's unpaid tax

October 2012

Amendment to Act No. 222/2004 Coll. on Value Added Tax.

From 1 October 2012, there are significant changes in liability for payment of VAT.

One change is the enlargement of the list of transactions where VAT liability is transferred from supplier to purchaser (who is also VAT registered).

The list now includes real estate transfers occurring more than 5 years after the final inspection ("kolaudačné rozhodnutie") was granted, which are exempt from VAT unless the purchaser wants the liability to remain.

It also includes property transfers executed to discharge a liability in tax, insolvency or other debt recovery proceedings.

Another change is the extension of liability to VAT-registered purchasers of goods or services who know or have sufficient reason to know at the time that the tax would not be paid by the supplier. The change applies to existing contracts as well as those agreed after 1 October 2012.

A purchaser would have sufficient reason to know if:

- The amount payable in the invoice is too high or low with no economic justification,
- It continue doing business with the supplier after grounds for its deregistration appeared in the list maintained by the Financial Directorate, or

- The statutory body to which it belonged or one its members or associates was as statutory body to which the supplier belonged or one of its members of associates.

This means that if the supplier does not settle the tax listed on the invoice within the due date and at the same time one of the above points applies, the tax authority will transfer the obligation to pay the tax on the guarantor.

The liability will pass to the guarantor even if the supplier was wound up with no legal successor.

The supplier would have to pay the unpaid VAT within 8 days of the tax authority ruling that it was liable to do so, even if it decided to appeal against the decision. It is likely that making an appeal against the decision may be the only option for the purchaser, but it will not prevent it from having to settle the tax within 8 days. It would then receive a refund from the state if its appeal succeeded but would have get no other redress.

This change imposes a significant risk for purchasers, particularly in relation to large orders, since it can make them unexpectedly liable for a supplier's unpaid VAT and have a very short time within which to pay it.



In case of large deliveries this can seriously jeopardise the purchaser's financial stability. This risk should therefore be reflected in all future negotiations with suppliers.

The legal obligation to guarantee the settlement of tax unpaid by the supplier applies not just to contracts concluded after October 1st 2012, but also to existing contracts with any repeat business.

Ružička Csekés s.r.o law office is closely following the change and its influence on the business environment and is currently carrying out an analysis of its real impact on contractual relations and business dealings between particular undertakings.

If you need help or advice on how best to protect your company's interests in relation to possible tax liabilities, do not hesitate to contact us.

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