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News Flash

May, 2024



VAT on leasing in Slovakia

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For many small and medium-sized family businesses, financial or operational leasing represents an attractive option for purchasing necessary assets such as machinery, vehicles, or technological equipment, without the need for significant upfront financial investments. Sale and leaseback can also be a beneficial form of financing in case of limited financial resources. For these companies, which often do not have a large accounting team at the disposal, leasing can be challenging in terms of correct handling of the accounting and tax aspects of such transactions.

Although leasing is generally popular and considered a relatively straightforward way of financing, it can be demanding in terms of complex and specialized assessment from a VAT perspective. Recent changes in legislation have classified several leasing-related transactions differently than in the past, and it is also expected that as of January 1, 2025, an amendment to the VAT Act will bring further changes that will affect this area of the economy.

Fees, compensations, and contractual penalties

As a result of the application of the case law of the European Court of Justice, with effect from April 1, 2023, there is a different interpretation of Slovak VAT legislation. This change affects leasing agreements, as well as other contracts where the recipient is obligated to pay additional sums under various titles, such as fees, fines, compensations, etc. Most of these fees were previously considered as out of the scope of VAT (a form of financial compensation without receiving any consideration for the customer), or there was different treatment for similar types of transactions due to unclear interpretation.

As of April 1, 2023, amounts paid in connection with the supply of goods and services based on contractually agreed conditions, such as excess mileage, downtime, late return of the leased item, or contamination of the rented item, are to be considered as supplies that are subject to VAT, regardless of how these payments are formally named (e.g., as fines, fees, reimbursements, compensations). A similar situation arises with fines/fees for early termination of the contract, where the lessor has the right to claim compensation for unpaid instalments until the time of commitment. Such a fee is considered as consideration for the service provided, i.e., rent

and is subject to VAT. The case law of the Court of Justice does not provide an exact procedure depending on the reasons for the early termination of the contract, whether it is an agreement, withdrawal, or termination of the contract.

On the other hand, a late payment interest or compensation for damage of goods remains outside the scope of VAT, as there is no consideration that the lessee would receive for the amounts paid.

Sale and leaseback as a financial transaction

Many companies use leaseback as a form of financing, and until December 31, 2023, such a form of leasing was considered for VAT purposes as two transactions: the supply of goods to the leasing company and subsequent acquisition of the service of renting the movable property.

As a result of the leaseback transaction, there is a formal change in the legal ownership of the leased item, but the economic owner remains the original owner (lessee), who receives additional financial resources.

Such a type of sale and leaseback agreement concluded after December 31, 2023, where most benefits and risks remain with the lessee (original

owner of the goods) and after the expiration of the contract, it is assumed that the ownership will be transferred back to them, is from January 1, 2024, considered a financial transaction eligible for VAT on leasing in Slovakia exemption. Old contracts concluded until December 31, 2023, will be treated in the original manner.

In the context of European case law, the aim of such transaction is to obtain additional financial funds, while there is no actual transfer of the right to the future lessee to dispose of the financing object as an owner. From a VAT on leasing in Slovakia perspective, it is not a supply of goods but an exempt financial service.

It is also necessary to note that the classification of the transaction for VAT purposes should be preceded by a detailed assessment of contractual conditions, which in the practice may vary from case to case, and therefore they cannot be generalized.

Financial leasing with the right to purchase the leased item

The new wording of the VAT on leasing in Slovakia Act expands the definition of the supply of goods to situations where goods are delivered based on a lease agreement or similar agreement with an agreed purchase option, provided that this option is the only reasonable choice for the lessee when concluding the contract. The amendment to the VAT Act is expected to enter into force on January 1, 2025, and this change will affect leasing agreements concluded after this date.

This leads to a substantial change in the tax regime since until now, only situations with the pre-agreed purchase obligation after the end of financial leasing were considered as the supply of goods. The right of purchase was considered as the provision of services, and the supplier paid VAT from monthly instalments. If the transaction will be characterized as the supply of goods after January 1, 2025, the lessor will be required to pay VAT at the time of delivery of the goods. There is a fine line between the supply of goods and services and the final treatment will depend on specific contractual conditions.

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About Accace Slovakia

Accace was established in 2006 in Bratislava. Accace Slovakia currently employs more than 120 professionals and provides a comprehensive range of services in the field of accounting outsourcing services, payroll processing and HR administration, tax and business advisory, legal and corporate services, up to advisory services for start-ups. In over 15 years, we have developed into an innovative provider of full-range BPO services. We are regularly listed among the TOP 10 advisory companies in Slovakia. The legal services are provided by our own established law firm, Accace Legal. You can find us in Bratislava, Košice and Trenčín. Within Accace Group, we connect more than 800 experts in over 50 locations and provide services to more than 2,500 clients.

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