Hungarian Government issues guideline on implementation of VAT groups and intensifies EKAER audits

CJEU’s Skandia judgment may result in targeted VAT audits

In line with the respective rulings of the Court of Justice of the European Union (CJEU), a joint guideline of the Hungarian Ministry for National Economy and the tax authority was recently published concerning the Hungarian implementation of value added tax (VAT) groups.

According to the guideline, if a company's headquarters and fixed establishment(s) are located in a different Member State or outside the EU but the company has a fixed establishment in Hungary, only the Hungarian fixed establishment should be regarded as part of the Hungarian VAT group. Similarly, if a company has Hungarian headquarters, but also has fixed establishment(s) abroad, only the Hungarian headquarters should be considered part of the Hungarian VAT group (Skandia-principle).

In light of the guideline, if a Hungarian unit (headquarters or fixed establishment) of an entity joins a VAT group in Hungary, the transactions between this domestic unit and the foreign units (headquarters or fixed establishments) of the same company are supplied between two different taxable persons. In consequence, these transactions fall within the scope of VAT, therefore they should be invoiced, shown in the tax returns, and taxes must be paid on them.

Although the CJEU judgments do not deal with the reverse situation, the tax authority considers in its guideline that the consequences above are also applicable for such situations. Namely, if a foreign unit of an enterprise (headquarters or fixed establishment) joins a VAT group created in another Member State of the EU, the foreign unit (headquarters or fixed establishment) joining the foreign VAT group is split from the Hungarian taxable person from a VAT perspective and becomes
part of a different taxable person (i.e., the VAT group) (reverse Skandia-principle). Therefore, the transactions between the Hungarian headquarters or fixed establishment of a company and the fixed establishment(s) or headquarters of the entity that is part of a foreign VAT group are supplied between two separate taxpayers, so these supplies are also taxable transactions.

The Ministry and the tax authority take the view that the interpretation above is already applicable since the new Hungarian Act on VAT entered into force on 1 January 2008. As a result, it is expected that during upcoming tax audits the Skandia and reverse Skandia principles will be applied and in such cases tax shortages will be established and tax penalties and late payment interest will be levied. In addition, the possibility that the tax authority will perform dedicated tax audits focusing on this topic within a short period of time following the publication of the interpretation cannot be excluded.

The changing landscape of EKAER audits
Tax audits concerning the Electronic Control System of the Movement of Goods on Road (EKAER) are intensifying, whereby a broadened and more complex scope of documents and information are scrutinized. Based on recent EKAER-audits, the tax authority’s ex-post EKAER-inspections focus on comparing a broad scope of information, including data recorded in the EKAER system and databases of the tax authority (and other authorities), data that is shown on documents related to the transport as well as information from the respective VAT returns.

Taxpayers are often selected for inspection based on filtering performed in the EKAER database, i.e., based on contradictions, data deficiencies, and presumably false or unrealistic data reported in the EKAER system. This type of selection method also results in the tax authority finding a higher proportion of the errors, and even an unintentional data recording inaccuracy (for example, mistyping a character in the license plate number of the motor vehicle performing the transport) may result in the taxpayer being selected for an EKAER audit by the tax authority. During such an audit, the tax authority may also reveal other VAT related problems.

Endnotes
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