Value Added Tax: Treatment of EU Advisory Services for Foundations

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Since Value Added Tax (VAT) is not harmonized in the relationship between the European Union (EU) and Liechtenstein or Switzerland, cross-border issues must be viewed from different perspectives. In practice, this often leads to incorrect invoices and additional tax burdens, which in many cases can be avoided.

From the perspective of the EU VAT Directive

VAT law within the EU has been harmonized on the basis of the Council Directive on the Common System of Value Added Tax (EU VAT Directive) since 2006. The member states implement the standardized EU law requirements in their national VAT laws. The amount of the tax burden in cross-border matters depends largely on the place of supply. To this end, a fundamental distinction must be made between services to entrepreneurs (B2B) and services to non-entrepreneurs (B2C).

For the vast majority of cases involving so-called catalogue services this is however not necessary on the basis of the EU VAT Directive. The catalogue services include, in particular, services of consultants, lawyers, auditors and other similar services.

In the case of services, the place of supply is generally determined in accordance with Art. 43 ff., according to which the place of supply in B2B cases follows the destination principle and the service provided from the EU is not taxable there. In B2C cases, however, the place of supply is generally based on the origin principle. But this does not apply if it is a catalogue service, since in this case the place of supply is, in contrast to the general rule, also determined according to the destination principle. Only a few member states have deviating special regulations.

In both cases (B2C and B2B) the place of supply is outside the EU in the country of destination. Since there is no taxability in the respective EU member state, the EU service provider must issue the invoices without VAT.

The EU service provider only has to check whether the service recipient is based outside the EU territory.

From the perspective of the VAT Act

From a Liechtenstein perspective, irrespective of the procedure of the EU service provider, it must first be examined whether the reverse charge tax ("Bezugssteuer") is applicable.

Services provided by foreign companies to domestic service recipients who are not entered in the domestic VAT register and who purchase services for more than CHF 10.000 per year are subject to reverse charge tax. The prerequisite is always that the place of supply is in Liechtenstein. In pure reverse charge cases the tax also has a definitive effect. A relief through input tax deduction is excluded. If the reverse charge tax liability is not acknowledged, there is also the risk of interest on late payments.

For domestic service recipients who are entered in the VAT register, however, relief through input tax deduction is not excluded, so that no definitive tax burden arises. If the foundation carries out an entrepreneurial activity and this is not acknowledged, there may be an avoidable definitive burden as a result of the reverse charge tax. Against this background, registration should be examined and carried out.

Avoiding double taxation

The reverse charge tax without the possibility of an input tax deduction arises regardless of the procedure of the service provider. If catalogue services from the EU are invoiced with VAT, the worst case scenario is definitive double taxation. In a first step, a correction of the invoice on the basis of the EU VAT Directive must be examined. In a further step, it should be analysed whether a definitive tax burden can be avoided altogether.

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