

TaxAlert

2008

New liability rules in the Rules of Taxation for safeguarding public money

In order to combat the black economy, new rules will be introduced into the Rules of Taxation with the aim of safeguarding public money. The new rules affect entrepreneurs, and their subcontractors, which participate in public procurement.

In accordance with paragraph 36/A of the Rules of Taxation which will be effective from 1 March 2008, the winning entrepreneur in a public procurement tender would be allowed to settle in full fees exceeding net THUF 100 per month to its subcontractor or its sub-contractor defined by the Act on Civil Law regarding contracts between them, if the subcontractor presents, submits or sends a so called “zero” tax certificate to the entrepreneur before the payment. This tax certificate can not be older than 15 days and has to indicate that the subcontractor does not have any recorded tax due to the tax or customs authority. This rule has to be applied to each participant in the contractor chain.

These rules have to be applied to every payment made after 1 March 2008, regardless of whether the related contract has been signed before or after this date.

The entrepreneur is obliged to inform the subcontractor that the payment is subject to the public procurement obligation rules. This information requirement has to be fulfilled subsequently for those contracts signed before the effective day of the rule. If an entrepreneur or a subcontractor which employs another subcontractor does not fulfil this obligation, up to 20 per cent of the payment can be levied as default penalty for each contract.

The entrepreneur has to withhold the whole payment if no “zero” tax certificate has been presented, submitted or received. If the entrepreneur settles the fee without withholding, they become jointly liable with the subcontractor for the tax due at the time of the payment, up to the amount of the total fee due.

The request for the tax certificate only has to be submitted to the tax authority. The tax authority would obtain information from the customs authority. The tax certificate would contain the existence or non-existence of tax due as recorded by the tax or customs authority. The name, seat and tax number of the entrepreneur settling the fee would also have to be indicated on the request. The subcontractor has to request a tax certificate for each payment to be received from each different entrepreneur. The request is free of charge and it can also be submitted electronically. The tax authority is required to issue the tax certificate within 8 days.

If related parties are directly involved in the execution of a public procurement contract, they will have joint liability up to the settled fee amount for subcontractor's tax due existing at the time of payment.

These rules also have to be applied for the contract between the publisher of the public procurement tender and the entrepreneur, except that the tender publisher would not have joint liability.

According to information supplied by the Tax Authority, the tax certificates are to be issued on time, and they will try to satisfy the unpredictable amount of requests. Should the tax certificate not be issued on time, it is recommended to contact the tax authority personally.

Should you have any questions regarding the above, please do not hesitate to contact Tibor Jároli (tel.: 887-7416, email: tibor.jaroli@kpmg.hu) at the tax department of KPMG Advisory Ltd or your regular KPMG tax adviser.

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