

Bulgaria: Certain restrictions to the deduction of input VAT

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Bulgaria: Certain restrictions to the deduction of input VAT. Jurisprudence

[English abstract]

Under Bulgarian law tax payers are not entitled to deduct input VAT where such VAT has been wrongfully charged by the supplier. There is no legal definition of when VAT is considered to be wrongfully charged.

The jurisprudence of the Bulgarian Supreme Administrative Court and certain rulings of the tax administration enlighten the application of the statutory provision in question.

The tax authorities clarify that VAT would be considered wrongfully charged where the supplier is not registered for VAT purposes or there is no taxable supply within the meaning of the Bulgarian VAT Act.

The Supreme Administrative Court further clarifies that VAT would be considered as wrongfully charged in the event of supplies of goods or services which have not actually taken place. According to Art. 25, paras 2 and 3, a taxable event occurs when the title to the goods is transferred to the recipient or the service is actually rendered. In order to be confirmed that the VAT invoices are related to the taxable event it needs to be established (in the event of tax audit or dispute) that the title to the goods has been transferred, respectively the service rendered.

In assessing whether the supplies have been actually performed the courts examine the technical capability and resources of the supplier, its manpower, the qualification of the persons rendering the services, the recording of the supplies in the books of the supplier and the recipient. It needs to be pointed out that the Supreme Administrative Court in its steady practice rules that the mere fact of recording the supplies in the books of the supplier and the recipient and the issuance of an invoice do not evidence the actual performance of the supplies in dispute. In addition, if the supplier is not found on its management address or in case that, the tax authorities would not be able to collect any evidence for the actual performance of the supply which will result in refusal for deduction of input VAT.

VAT is considered wrongfully charged and, respectively deduction of input VAT denied, in the event that the actual supplier of the goods or services and the person who has issued the invoice are different. This would be the case where there is no legal ground evidenced before the court for the supply to be performed by a third party or the case where the supplier has undertaken to perform the supply personally. Deduction of input VAT would not be denied where the actual supplier is a subcontractor of the person issuing the invoice and such circumstance is duly established before the court or the tax authorities with contracts and invoices.

The burden of proof for the actual performance of the supply lies with the audited person claiming deduction of input VAT. According to the Supreme Administrative Court the audited person claiming deduction of input VAT shall establish that the supplies are actually rendered by the supplier. In the event that the audited person - recipient of the supply cannot evidence, for whatever reason, that the supplier has the technical capability and resources, the necessary manpower or qualifications to perform the supply, the Supreme Administrative Court would find that there is no actual supply and thus no right for deduction of input VAT.

As a practical problem, in most cases the recipient of the supply does not have documentary evidence that the supplier has the necessary manpower and qualifications, technical capability and resources to perform the supplies.

The discussed statutory provision creates serious obstacles to the business and complications in the exercise of their right to deduct input VAT. In practice, the “wrongful” charge of VAT is one of the most often used grounds for rejection by the tax authorities of input VAT deduction.

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