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MEMORANDUM N. 49/2024

Insight

Subject: Secondment / Loan of personnel subject to VAT as of January 1, 2025

With the publication in the Official Gazette No. 267, Nov. 14, 2024, of Law No. 166/2024, converting Decree-Law No. 131/2024, the so-called “Save Infringement Decree,” the Legislature in order to align the national regulations with the interpretation of the EU Courts **deleted the provision that provides for the non-liability to VAT of the secondment/loan of personnel with charging of the related cost.**

To this end, Article 16-ter, DL No. 131/2024 provided for the repeal of paragraph 35 of Article 8, Law No. 67/88; therefore, the provision that provided for the non-relevance for VAT of the transactions under consideration in the case of payment by the seconding party of a consideration equal to the costs incurred by the seconding employer is no longer applicable.

Thus, secondments/loans of personnel, entered into or renewed on or after January 1, 2025, are subject to VAT.

By the express provision of subsection (2), the new legislation, although effective as of November 15, 2024, is applicable to staff loans/layoffs entered into or renewed as of January 1, 2025.

In the Technical Report of the provision under consideration, it is pointed out that:

“subjecting such refunds to VAT results in a VAT payable by the seconding party and a VAT receivable by the seconding party. Since both are VAT operators, the VAT paid by the first party would be matched by a VAT deduction of the same amount by the second party, with neutral effects on the overall tax revenue”.

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It should be noted that such “neutrality” may not be guaranteed in cases where the secondee is a VAT subject with a restriction on the right to deduct input VAT. In fact, for a secondee operating under a VAT-exempt regime, taxing the secondment of personnel results in a higher cost.

The firm remains available for any clarifications.

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