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Opravljanje storitev za plačilo po ZDDV-1

Supply of services for consideration in the Value Added Tax Act

POVZETEK ● *Predmet DDV-ja so tudi storitve, ki jih davčni zavezanec v okviru opravljanja svoje ekonomske dejavnosti opravi na ozemlju države članice za plačilo. Iz sodne prakse Sodišča EU, ki jo povzema tudi FURS v svojih pojasnilih, izhaja, da je storitev opravljena "za plačilo" in je zato obdavčljiva samo, če med izvajalcem in prejemnikom storitve obstaja pravno razmerje, v okviru katerega se izmenjajo vzajemne dajatve oziroma storitve, pri čemer plačilo, ki ga prejme izvajalec, pomeni dejansko protivrednost storitve, opravljene za prejemnika. Junija 2016 je Sodišče EU pojasnilo, da dejavnost javne radiodifuzije, ki se financira iz obveznega zakonskega prispevka, ki ga plačujejo lastniki ali imetniki radijskega sprejemnika, ne pomeni opravljanja storitev "za plačilo" in torej ne spada na področje Direktive o DDV-ju.*

Ključne besede ● *DDV, storitev, plačilo*

SUMMARY ● *Subject to VAT is also the supply of services for consideration within the territory of a Member State by a taxable person acting as such. According to the case law of the European Court of Justice, also stated in the published opinions of the Slovenian Financial Administration, a supply of services is effected "for consideration" and shall hence be taxable only if there is a legal relationship between the provider of the service and the recipient, pursuant to which there is a reciprocal performance in place. The remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient. In June of this year the Court explained that public broadcasting activities, funded by a compulsory statutory charge paid by owners or possessors of a radio receiver and carried out by a radio broadcasting company created by law, do not constitute a supply of services 'effected for consideration' and therefore fall outside the scope of the VAT Directive.*

Key words ● *VAT, service, consideration*

Brigita Franc

Korporativna jamstva – pravna opredelitev ter problematika transfernih cen – primerjalnopravni vidik

Corporate guarantees – legal definition and the problem of transfer pricing – comparative legal context

POVZETEK ● V poslovni praksi obstaja vrsta korporativnih jamstev. Pri ugotavljanju transfernih cen se zastavlja vprašanje, ali je dajanje korporativnih jamstev storitev, ki se opravlja na trgu, in kakšna je ustrezna tržna cena za takšno storitev. V prispevku so predstavljeni zgledi drugih držav pri opredelitvi, ali je treba nadomestilo za dana jamstva obračunati in po kakšni metodi se zaračunava. Pojasnjeno je, zakaj tradicionalne metode transfernih cen ni mogoče neposredno uporabiti. V prispevku so opisane primerne metode izračuna nadomestila za dana jamstva ter kakšne so predpostavke in omejitve pri njihovi uporabi.

Ključne besede ● bančna garancija, korporativna garancija, poroštvo, patronatska izjava, transferne cene, ustrezne primerljive, smernice OECD-ja

SUMMARY ● In business practice, there are many types of corporate guarantees. When establishing transfer pricing, a question arises: does providing the corporate guarantees involve a service that is carried out on the market and what is a suitable market price for such service. The present article presents various approaches of other countries in determining whether it is necessary to calculate the compensation for given guarantees and according to which method. The article argues why it is not possible to apply directly the traditional method of transfer pricing, and which methods would be appropriate for the calculation of the compensation for given guarantees, and discusses the assumptions and limitations in their application.

Key words ● bank guarantee, corporate guarantee, suretyship, letter of comfort, transfer pricing, suitable comparable OECD guidelines

Dr. Marijan Kocbek

Naknadna vplačila v kapital – pravna analiza in obdavčitev pri prodaji poslovnih deležev fizičnih oseb

Tax aspects of subsequent payments to equity

POVZETEK ● Avtor obravnava v prispevku davčni vidik naknadnih vplačil, ki so poseben institut korporacijskega prava in po ZGD-1 omogočajo poenostavljen in fleksibilen način

zagotavljanja lastnega kapitala, predvsem družb z omejeno odgovornostjo. Posebej je obdelano aktualno vprašanje v davčni praksi, ali naknadno vplačilo poveča nabavno vrednost kapitala v smislu opredelitve iz ZDoh-2. Avtor meni, da morajo biti vplačila in izplačila naknadnih vplačil ter prenosi poslovnih deležev v tej zvezi davčno nevtralni. To stališče podkrepí s podrobno analizo korporacijskopравnih pravil, ki opredeljujejo naknadno vplačilo kot (equity) lastniško naložbo družbenika sui generis (posebno), ki je ni mogoče enačiti s posojilom družbi.

Ključne besede ● naknadna vplačila, lastni kapital, obdavčitev kapitalskih dobičkov, osnovni vložek, poslovni delež

SUMMARY ● The article deals with tax aspects of subsequent payments, which are a special institute of corporate law and are a simple and flexible way of providing equity in accordance with the Companies Act (ZGD-1), particularly in limited liability companies. Special attention is given to the topical tax issue, whether subsequent payments increase the cost of the capital as defined in the Personal Income Tax Act (ZDoh-2). The author takes an affirmative stance on this matter and explains that subsequent payments and transfers of business shares should be treated tax neutrally in this regard. This view is further explained by a detailed analysis of corporate rules that define the subsequent payment as an equity investment sui generis of a company member, which cannot be equated with a loan to the company.

Key words ● subsequent payments, own capital, capital gains taxation, capital contribution, subscribed contribution, business share

Danilo Marinović

Pripombe k zapisniku v postopku davčnega inšpekcijskega nadzora in pravica do zaslišanja

Comments to the minutes taken in a tax inspection procedure and right to be heard

POVZETEK ● Pravica do zaslišanja kot temeljnega načela upravnega postopka je najpomembnejša upravno-procesna pravica strank. Zakon o davčnem postopku vsebuje posebno ureditev, s katero je čas dokazovanja zavezancev za davke v postopku davčnega inšpekcijskega nadzora relativno omejen že pred izdajo odločbe davčnega organa do izdaje zapisnika. Dokaze za svoje trditve v pripombah k zapisniku zavezanec za davek lahko predloži le, če upraviči, zakaj tega ni oziroma ni mogel storiti pred izdajo zapisnika. Ali je takšna omejitev v skladu z veljavno zakonodajo, je vprašanje, na katero strokovna javnost in predvsem davčni zavezanci že dalj časa pričakujejo strokovno utemeljen odgovor pristojnih institucij.

Ključne besede ● pravica do zaslišanja, postopek davčnega inšpekcijskega nadzora, zapisnik, pripombe k zapisniku, predložitev dokazov

SUMMARY ● The right to be heard as a fundamental principle of any administrative procedure is the most important administrative and procedural right of the parties. The

Tax Procedure Act contains special provisions relatively limiting the time for the submission of taxpayers' evidence during the tax inspection procedure, already before the tax authority issues the decision and to the issue of the minutes. The taxpayer may submit the evidence for his claims contained in the comments to the minutes only if he can justify why he has not or could not have submitted them before the minutes were issued. Is such a restriction in accordance with the applicable legislation, this is the question on which expert public and especially taxpayers have long been expecting a professionally sound response from the competent institutions.

Key words ● *right to be heard, tax inspection procedure, minutes, comments to the minutes of records, submission of evidence*

Dr. Peter Podgorelec

Pravilo podjetniške presoje in možna vloga notranjega revizorja v zvezi z njim

Business judgment rule and possible role of the internal auditor in relation to this rule

POVZETEK ● *Pravilo podjetniške presoje pomeni, da člani organa vodenja ali nadzora ne odgovarjajo za škodo, ki je nastala zaradi njihove podjetniške odločitve, če so izpolnjene določene predpostavke. Te predpostavke so: obstoj primerne informacijske podlage odločitve, odločitev je v skladu z interesom družbe in je bila sprejeta brez nasprotja interesov ter tujih vplivov, in dobra vera odločevalca. Izpolnitev naštetih predpostavk pomeni, da je bila podjetniška odločitev sprejeta v skladu s standardom strokovne skrbnosti, ki velja za člane organov kapitalskih družb. Notranji revizor lahko zagotovi informacije glede predpostavk primerne informacijske podlage odločitve in njene skladnosti z interesi družbe. Njegove naloge lahko razdelimo na posle, ki so neposredno povezani s pravilom podjetniške presoje, in na sistemsko usmerjene posle, spodbujene s tem pravilom.*

Ključne besede ● *organ vodenja ali nadzora, odškodninska odgovornost, pravilo podjetniške presoje, primerna informacijska podlaga, interes družbe, notranji revizor*

SUMMARY ● *The business judgment rule implies that the members of the management and supervisory boards shall not be liable for the damage resulting from their business decision if certain conditions have been met. These conditions are: an adequate information base, a decision which is made in accordance with the company's interest and adopted without conflicts of interest and external influences as well as the good faith of the decision-maker. Fulfilling these conditions means that the business decision was taken according to the professional care standard, which applies to the members of corporation bodies. The internal auditor may provide important information in fulfilling the conditions of an adequate information base of the decision and its conformity with the company's interest. His or her tasks can be divided, on the one hand, into the tasks which are directly*

linked with the business judgment rule and, on the other hand, the system-oriented tasks stimulated by this rule.

Key words ● *management or supervisory board, liability for damage, business judgment rule, adequate information, interes of the company, internal auditor*