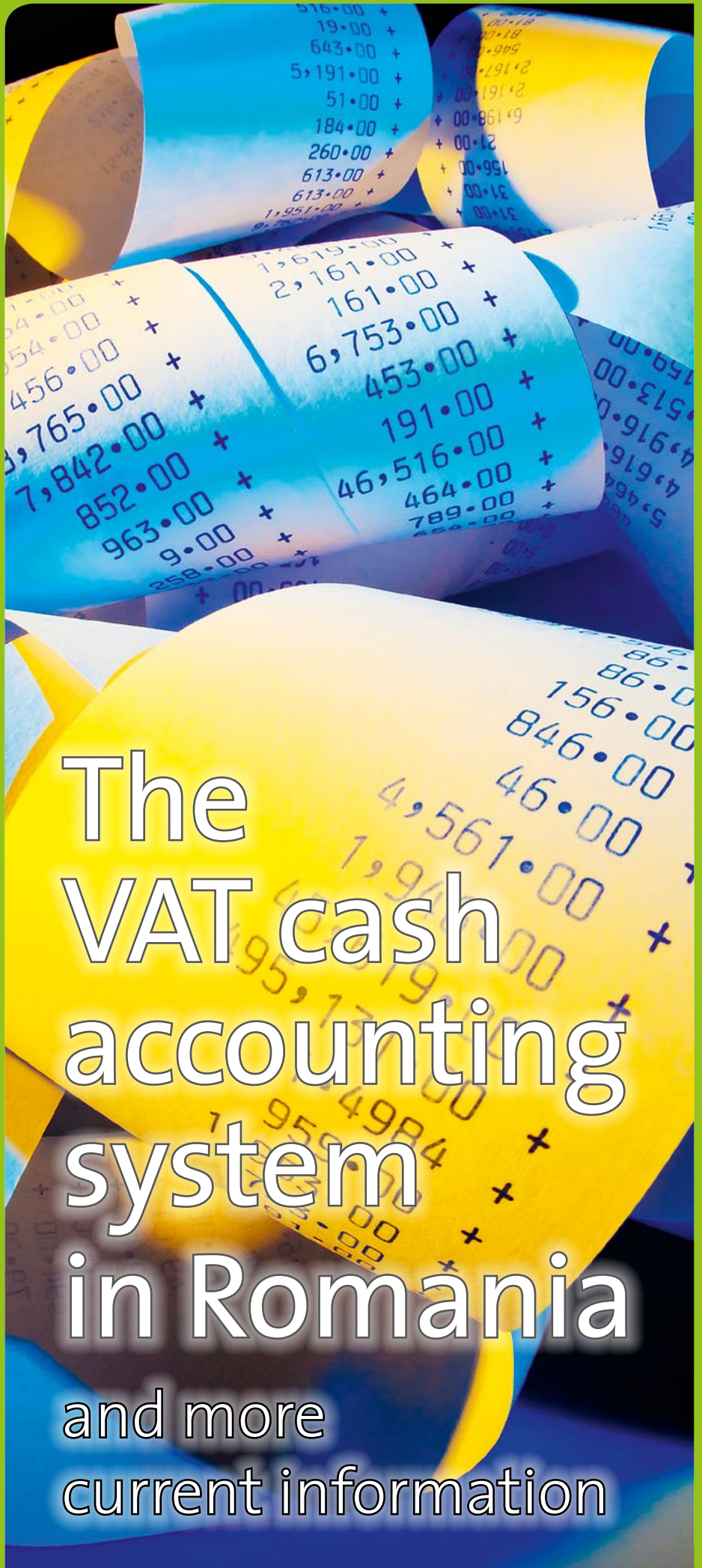




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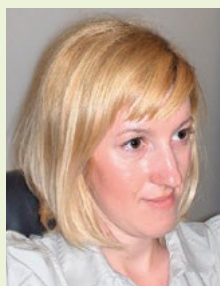
The VAT cash accounting system in Romania and more current information

The VAT cash accounting system in Romania

By Raluca Tutu

Persons subject to the VAT cash accounting system. These are taxable persons whose place of business is located in Romania, who are registered for VAT purposes and who have a turnover not exceeding RON 2,250,000.

Fundamental information about the VAT cash accounting system. Those who are subject to this system must only pay VAT on sales after invoices are paid by the recipients of goods or services they have supplied. By law, these invoices must be paid within 90 days and must include the phrase “TVA la încasare” (VAT cash accounting). Those who are subject to the system may have VAT deducted on the goods or services from their supplier, regardless of whether the supplier is also subject to the system. Those who do not use VAT cash accounting, regardless of the tax system to which they are sub-



Raluca Tutu

GGI member firm
Mirus Consultanță Fiscală SRL
 Auditing & Accounting, Tax
 Bucharest, Romania
 Raluca Tutu
 T: +40 31 405 10 17
 E: traluca@mirus-group.eu
 W: www.mirus-group.eu

Raluca Tutu is a Romanian chartered tax consultant who leads the tax practice Mirus Consultanță Fiscală SRL. She has seven years' professional experience in VAT and international tax. Raluca is the lead tax consultant on various tax mandates for the firm's clients. She regularly publishes and contributes tax articles and opinions to various media channels, and is the author of the book “Value Added Tax, from Theory to Practice”.

Mirus Consultanță Fiscală SRL is one of the leading middle-market multi-disciplinary firms in Romania, focusing on tax, immigration, auditing, accountancy & payroll and advisory. Their mission statement is to build and maintain successful and mutually satisfying business relationships.

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ject, may exercise their right to have VAT deducted for their acquisitions from suppliers who are subject to VAT cash accounting – but only upon payment of the relevant invoices.

VAT for those who apply the VAT cash accounting system.

ACQUISITIONS

VAT can be reclaimed upon payment of the relevant invoices issued for the acquisition of taxable goods and services from any person. If the VAT is not paid within the tax period during which the invoice was received, it shall be registered in account no. 4428.

VAT can be reclaimed according to general rules: (i) acquisitions subject to reverse charge; (ii) intra-community acquisition of goods; (iii) imports of goods (based on customs import declaration).

SALES

VAT collection: (i) upon payment from the recipient of goods or services; (ii) up to the 90th day after the operation date. Exceptions: (i) operations provided in Article 1342 Para. (6) are exempt from the application of the VAT cash accounting system.

Taxable persons registering for VAT purposes after 1 January 2013. The VAT cash accounting system applies only to taxable persons registering for VAT purposes after 1 January 2013. In such cases a notice (Form no. 097) must be filed.

VAT for taxable persons not subject to the VAT cash accounting system.

ACQUISITIONS

From those subject to the VAT cash accounting system: VAT is deducted upon payment of an invoice.

Exceptions: VAT is deducted according to standard rules: operations provided in Article 1342 Para. 6 are exempt from application of the VAT cash accounting system.

From those not subject to the VAT cash accounting system: VAT is deducted according to the general rules in Article 145.

To any person: VAT is paid in accordance with the general rules for taxable operations.

Operations exempt from the VAT cash accounting system

- Operations, the delivery or provision location of which is deemed not to be in Romania (intra-community deliveries of goods, exports);
- Deliveries of goods and/or provisions of services, the recipient of which is a person subject to VAT payment (intra-community deliveries of services and external deliveries of services);
- Deliveries of goods or provisions of services exempt from deduction right;
- Operations subject to special schemes provided in Article 1521 – 1523 (travel agencies, schemes for second-hand goods);
- Deliveries of goods and/or provisions of services, the value of which is received in cash from recipients that are legal persons, self-employed persons, freelancers and associations without legal personality;
- Deliveries of goods and/or provisions of services, the recipient of which is a person affiliated with the supplier/provider.

VAT in Austria

Tax refunds for businesses from non-EU member states

Dr. Stefan Drawetz

Foreign taxable persons who do not provide goods or services and whose place of taxation for VAT purposes is not in Austria may reclaim the VAT amounts charged to them in Austria by other businesses (“input tax”) under the input tax refund procedure. They may also request a refund from the Austrian fiscal authorities. The City of Graz (Graz-Stadt) revenue office is responsible for all applications in Austria.

The following completed forms and original documents are required for the application:

1. The Verf 18 form (first applications only, available in German and English)
2. The U5 application form (only available in German)
3. The original confirmation by the revenue authorities of the recipient’s country of origin, confirming their registration there as a taxable person
4. Original invoices

If the forms are not completed in full or if any documents are missing, there can be no guarantee that the application will be granted. The forms can be downloaded from www.bmf.gv.at.

Tax Office of Graz-Stadt Speichern - Save Import
Business assessment teams for foreign businesses
Questionnaire for the refund of input VAT

1. Name of applicant/business name and address, telephone number, fax number, e-mail
2. Type of business activity
3. EU VAT identification number (EUBusinesses) and VAT identification number of country of residence
4. Austrian mailing agent (name, address and telephone number) Note: compulsory for Liechtenstein and Switzerland

The Verf 18 form

Lokales Speichern **Importieren von Formulardaten** Hinweis: Sie müssen nur die Anlagen ausdrucken, bei denen Sie tatsächlich Angaben zum Antrag auf Vergütung der Umsatzsteuer gemacht haben. Bitte verwenden Sie zur Einschränkung der auszudruckenden Seiten das Druckermeng.

Ist das Ihr erster Antrag?
Wenn nein, bitte Steuer Nummer angeben! /

Finanzamt Graz-Stadt
Betriebsveranlagungsteams Ausländerreferat
Conrad von Hötzendorf-Straße 14-18
8018 Graz

Antrag auf Vergütung der Umsatzsteuer für nicht im Gemeinschaftsgebiet ansässige Unternehmer
(Vor dem Ausfüllen bitte Formular U 5a beachten)
(*) Zutreffendes ankreuzen ☑

- 1 Name und Vorname oder Firma des Antragstellers
Straße und Hausnummer
Postleitzahl, Ort, Land
- 2 Art der Geschäftstätigkeit
- 3 Finanzamt und Umsatzsteuer-Nummer in dem Staat, in dem der Antragsteller seinen Sitz, Wohnsitz oder seinen gewöhnlichen Aufenthaltsort hat
- 4 Vergütungszeitraum
von Monat | Jahr bis Monat | Jahr

...next page

The U5 application form

Reclaiming VAT is possible within the usual six-month period, and posting in time is sufficient. This period cannot be extended. If the application is filed late, input tax will not be refunded.

The refund must relate to a maximum period of one full calendar year and at least three consecutive full months of the same calendar year. The amount to be refunded must be at least EUR 360.

However, if the application relates to a period of the remainder of a calendar year shorter than three months, the amount to be refunded must be at least EUR 36.

GGI member firm

Grazer Treuhand Steuerberatung GmbH & Partner KG

Auditing & Accounting, Tax

Graz, Austria

Dr. Stefan Drawetz

T: +43 316 4780

E: s.drawetz@grazertreuhand.at

W: www.grazertreuhand.at

Dr. Stefan Drawetz has been a chartered accountant and managing partner at Grazer Treuhand since 2006. Stefan specialises in advising large companies as well as family businesses and individuals, often with an international background. He is the Head of Grazer Treuhand's Tax and Accounting department.



Dr. Stefan Drawetz



Grazer Treuhand provides a full range of tax, accounting, payroll, auditing and legal consulting services to national and international clients. It has six partners and employs around 60 people as tax advisors and accountants.

German VAT groups: detailed specification of organisational integration

By Olga Selmer

On 7 March 2013, the German Ministry of Finance issued guidance notes in which it specified organisational integration as one of the requirements for the existence of a VAT group, in addition to financial and economic integration. The new definitions are being embraced by professional circles as, prior to these changes, the question as to whether organisational integration should be a requirement in establishing a VAT group was the one that most divided opinion.

The general rule for organisational integration is that the management

of both parent and controlled entities should be linked in such a way that the controlling company can always execute its will within the controlled company. Appointing the same individuals as directors in both controlling and controlled companies ensures this organisational integration, but this approach is not essential when the enforcement of the will of the parent company can be ensured by other means. Nevertheless, problems may arise if, for example, the controlled entity has several directors and some of them are not involved in the management of the parent company. In this case, the existence of or-



organisational integration depends on the power of direction within the controlled company. Different possibilities as to how the power of direction may affect organisational integration are also de-

scribed in the guidance notes.

The new regulations apply on all open cases with retrospective effect from 1 January 2013. VAT groups that were established according to previous

regulations, and where all participants assume the existence of the VAT group, may continue to operate under the previous regulations on sales until 1 January 2014.

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Nörenberg • Schröder

Rechtsanwälte Wirtschaftsprüfer

Steuerberater Partnerschaft

Auditing & Accounting, Tax, Legal

Hamburg, Germany

Olga Selmer

T: +49 404 419 60 01

E: selmer@noerenbergschroeder.de

W: www.noerenbergschroeder.de

Olga Selmer has ten years' experience in compliance, accounting and tax advisory for nationally and internationally operating companies. She advises individuals and medium-sized companies on tax structure consulting, VAT, international taxation, mergers and acquisitions and appeal procedures. Her clients operate in trade, renewable energies, private equity, architecture and e-commerce. Olga speaks English, German, Russian and Ukrainian.



Olga Selmer

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Amendment to the Slovak VAT Act has introduced joint liability for Slovak VAT

By **Marián Augustín**

The latest amendment to the Slovak VAT Act has introduced customer liability for VAT charged on goods or services supplied in Slovakia, if the supplier has not paid (or has become unable to pay) the VAT when the customer knew or should have known that the VAT could not be paid to the tax authority.

The circumstances under which the customer should have known that the VAT will not be paid to the tax authority are: (1) unreasonably high or low con-

sideration for the supply; (2) ongoing business with “unreliable” suppliers; or (3) personally connected parties via either a statutory body position or ownership ties. The definition of an “unreliable” supplier has been introduced to the Slovak VAT Act.

If a VAT payer (1) has ceased to conduct an economic activity; or (2) repeatedly fails to comply with obligations to submit a tax return, fails to pay the tax, fails to comply with obligations during a tax audit, or has been unavailable at its address, the tax authority can deregister this VAT payer ex-officio.

The list of these “unreliable” taxpayers has been posted on the official website of the Slovak tax authority and will be updated regularly.

As a result, if a customer purchases goods or services from an “unreliable” taxpayer and the supplier fails to pay VAT to the tax authority, the tax authority shall request that the customer pays the VAT. So far, the joint liability has been used only in cases of personally related parties with obvious intentions of tax fraud.

...authors profile see next page

GGI member firm
AT Partners, k.s.
Auditing & Accounting, Tax
 Bratislava, Slovakia
 Marián Augustín
 T: +421 25 296 69 55
 E: marian.augustin@atpartners.sk
 W: www.atpartners.sk

Marián Augustín is a Slovak statutory tax advisor, an active member of the VAT Methodological Committee of the Slovak Chamber of Tax Advisors and a member of GGI's ITPG and VAT Practice Group. He

also gives lectures on various VAT issues and has worked as a tax advisor for both Andersen and Ernst & Young in the past. **AT Partners, k.s.** is a professional services organisation located in Bratislava. It provides integrated solutions that draw on diverse and profound competencies in tax, audit and accounting consulting and assurance. AT Partners provides clients with a broad variety of tax, audit and accounting advisory services as well as payroll compliance.



Marián Augustín

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Advance VAT rulings temporarily available?

Toon Hasselman

A trial procedure for an advance

VAT ruling for cross-border transactions has been set up between 13 EU countries (Belgium, Cyprus, Estonia,

France, Hungary, Latvia Lithuania, Malta, The Netherlands, Portugal, Slovenia, Spain and the United Kingdom) until 31 December 2013.

This ruling should be of special interest to companies that engage in complex transactions, where conflicting interpretations between the tax authorities of the EU countries concerned may cause problems, especially in regards to double taxation. The ruling request should be made in the participating EU country where the company is registered for VAT purposes.

The EU Commission's notice on this new initiative states that "Consultations between the competent authorities of the member states concerned will only take place if this is requested explicitly by the applicant." However, another paragraph reads: "On the basis of such a request, the member states concerned will consult each other." How these statements can be reconciled is not made clear, so it seems safer to assume that all



Toon Hasselman

GGI member firm
LIMES International B.V.
 Tax, Advisory, Fiduciary & Estate Planning
 Noordwijk, the Netherlands
 Toon Hasselman
 T: +31 71 750 68 00
 E: toon@limes-int.com
 W: www.limes-int.com

Toon Hasselman is a VAT specialist who has been working in the field of indirect tax for more than 20 years. Serving clients from national and international companies and having worked in every existing kind of indirect tax branch, he offers pragmatic solutions on a cost-effective basis.

LIMES International B.V. is an independent international tax consultancy firm specialising in cross-border issues. It focuses exclusively on companies and expats that cross

borders, providing them with a broad range of integrated solutions in tax and expat, legal, payroll, immigration and relocation, pension and insurance, HR and VAT and customs services.

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relevant authorities will be informed.

At any rate, the advance ruling may sufficiently protect the company in a country where the request is made,

but its value in the other EU countries concerned may be limited in practice, as the EU Commission's notice states: "However, this cross-border ruling

process does not guarantee that these member states will agree on the VAT treatment of the transactions envisaged."

The hidden VAT – Why Europe escapes from a benefit

Dr. Giovanni Bianchi

In Europe, the desire to compensate for VAT exemptions is growing, as evidenced by the court cases C-216/97 Gregg; C-384/98 D/W; C-498/03 Kingcrest; C-613/2010 Debiasi, by the use of legislation in force (e.g. VAT grouping and exemption for cost-sharing associations) and by proposed legislation (postal sector COM (2003) 234 def; insurance and financial service COM (2007) 746 e COM (2007) 747 def.).

Exemption without deduction of VAT paid on the purchase of goods and services was introduced in the VAT Directive "to reduce the cost of certain activities which are in the public interest". This concerns not only healthcare, education, university, culture and non-profit organisations but also banks, the financial and insurance sectors and real estate.

Given its social aim and public impact, this was made mandatory for all EU countries in the belief that it could give consumers a greater benefit than the application of the lower reduced rate.

Due to technological innovation in many sectors (e.g. healthcare) the exemption has often lost its purpose: it is no longer a benefit since hidden VAT (i.e. VAT that cannot be deducted), is higher than the global VAT charged to consumers. It therefore becomes an obstacle to new management models as it entails the outsourcing of "no core" services, the lack of ability to form dif-

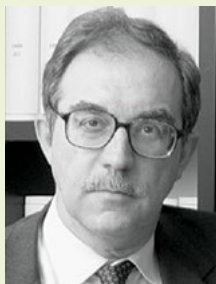
ferent business structures, real estate and technological investments etc.

These are the conclusions of a recent study conducted by Comma 10, which estimated the incidence of hidden VAT in the Italian healthcare industry through a model that can also be useful for assessing the impact of hidden VAT in other countries.

Through the cooperation of other GGI members, significant differences

between the laws of different countries in terms of tax exemptions and reduced rates have also been highlighted.

The high cost of irrecoverable VAT and the strong differences which exist in VAT rates and exempted activities in European countries also implies the need for appropriate cross-border advice for clients working in "out of scope" or "VAT-exempt" areas.



Dr. Giovanni Bianchi

Dr. Giovanni Bianchi is a chartered accountant, tax and corporate advisor, registered auditor and a technical advisor for the Italian Court. He has more than 30 years of experience in accounting, consultancy and auditing for several companies and non-profit organisations. His domestic and international experience has enabled him to publish studies and technical articles, and he has worked with regional authorities, national ministries and European commission on a range of different

GGI member firm
COMMA 10 – Commercialisti & Avvocati
Auditing & Accounting, Tax, Legal, Advisory, Corporate Finance
Milan, Italy
Dr. Giovanni Bianchi
T: +39 02 481 92 58
E: giovanni.bianchi@comma10.it
W: www.comma10.it

subjects, including relationships between public and private companies (PPPs). **Comma 10's** most fundamental task is to facilitate professional collaboration between chartered accountants and lawyers, with the aim of providing integrated services to individuals, private and public companies as well as non-profit organisations.

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FYI – GGI Indirect Taxes News

GGI Geneva Group International AG

Schaffhauserstrasse 550
8052 Zurich, Switzerland
T: +41 44 256 18 18
E: info@ggi.com
W: www.ggi.com
W: www.ggiform.com

Responsible Editor in charge of Indirect Taxes contents:

Raluca Tutu
Chairperson of the GGI ITPG
Sub-Group Indirect Taxes
c/o GGI member firm
Mirus Consultanta Fiscalá SRL
15 Albac Street, 1st District
011607 Bucharest, Romania
T: +40 31 405 10 17
E: traluca@mirus-group.eu
W: www.mirus-group.eu

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VAT on real estate

By **Carina Langegger**
and **Manfred Leitinger**

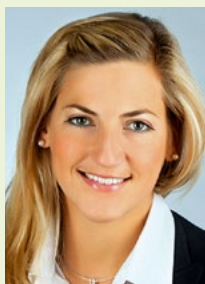
Following the amendments made to the Austrian VAT Act in 2012, changes occurred for the worse with regards to VAT on rentals and to the input VAT adjustment period, in cases of change of property use.

VAT on rental of real estate. Renting agreements dated after 31 August 2012: the option right for VAT-liable renting can only be executed in cases where the lessee is entitled to an input VAT deduction of at least 95%. The execution of the option on VAT-liable taxation triggers the respective right for input VAT deduction. Medical centres or public buildings (schools, communal buildings, etc.) do not fulfil the 95% requirement and the

lessor therefore has to consider that a deduction of input VAT is excluded.

Input VAT adjustment due to change of use. In cases where input VAT has been deducted at the moment of erection or acquisition of real estate, and where the respective real estate is not used for business purposes, an input VAT adjustment is compulsory. The input VAT adjustment period has been changed from 10 to 20 years and has been effective since 1 April 2012 (date differs from the one above). As a consequence, every new renting agreement extends the input VAT adjustment period to 20 years. Investors are facing considerable changes.

Both provisions provide extensive interim regulations and borderline problems. Contacting an expert for detailed advice is recommended.



Carina Langegger



Manfred Leitinger

GGI member firm

Prodinger & Partner St. Johann Steuerberatung GmbH & Co KG

Auditing & Accounting, Tax, Advisory, Corporate Finance, Fiduciary & Estate Planning
St. Johann im Pongau, Austria
Carina Langegger / Manfred Leitinger
T: +43 6412 40 77
E: carina.langegger@prodinger.at
E: m.leitinger@prodinger.at
W: www.prodinger.at

Mag. Carina Langegger LLM is an international tax law expert at the Prodinger Group. She has studied International Business and International Tax Law in Austria, Spain and the UK. Dur-

ing her work with a Big Four company in Germany, she gained extensive experience in international transactions and currently deals with all international issues within the group. **Mag. Manfred Leitinger** is an expert who specialises in VAT consulting (consulting in cross-border business and foreign companies in Austria) and accounting. He has broken new ground in the field of accounting through the use of modern technology (i.e. scanning); he uses existing data in adjoining programmes and optimises operational procedures.

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