Final decision obtained by the integrated team of Toncescu si Asociatii – KPMG Legal and KPMG Tax mixed team regarding the expenses deductibility of the companies involved in a merger by absorption process

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The tax litigation team of Toncescu & Associates SPRL – KPMG Legal consisting of Vlad Peligrad, as coordinating partner of the litigation and arbitration practice and Oana Caloian as Senior Managing Associate, has obtained a final decision confirming the deductibility of expenses highlighted in invoices issued after the merger date of an absorbed company, reversing the relevant invoices and reissuing new invoices by the acquiring company during the tax inspection period (not during the period subject to tax control).

The joint team of lawyers and tax consultants of KPMG assisted the client from day one of the fiscal audit, through the entire audit, the administrative challenge and in front of the courts of law, offering fully integrated services to the client. The Tax team was composed of *Daniel Pana*, partner KPMG Tax and *Loredana Chereche*s, manager KPMG Tax.

The importance of this dispute lies in the fact that, in practice, there may be situations in which the companies in a merger process may issue invoices after the date of the merger for the services rendered or goods sold prior to the completion of the merger by the absorbed company. This was also the case of our client, who although the merger by absorption had been completed, the absorbed company (and dissolved after the merger date) issued invoices after the merger date for assets sold before the completion of the merger, invoices that were subsequently reversed and reissued by the acquiring company on the last day of the tax inspection.

The tax authorities claimed that the invoices initially issued by the absorbed company after the date of the merger, reversed and re-issued by the acquiring company, do not have the quality of supporting documents and do not reflect the reality, the verified taxpayer being dissolved before the date written on the invoices subject to judicial control, the date on which the absorbed company no longer had a valid VAT code. An additional argument of the tax authorities was that the re-issued invoices cannot be taken into account because they were not issued during the period verified by the tax authorities, but on the last day of the tax inspection.

The court correctly held that "the invoices were issued during the inspection, respectively on its last day [...] and submitted by the applicant on the occasion of the final discussion and before the issuance of the tax inspection report" and moreover, "the correction of the invoices may take place during the the tax inspection and not during the period verified". With the same argument, the court also rejected the claim of the tax authorities regarding "the lack of quality of supporting document of the first [...] invoices, in relation to the circumstance that no invoices could be issued starting with [date of merger] having in the seller heading the company [absorbed]", the re-issued (corrected) invoices representing the supporting document required by the Fiscal Code.

In relation to these elements, the court of judicial review found that the court of first instance correctly considered that the deductibility conditions for the expenses under analysis were met and therefore annulled the contested acts regarding the profit tax.

Toncescu Si Asociatii – KPMG Legal Litigation Team has extensive experience in tax, commercial, civil, contentious administrative litigation, but also in domestic and international commercial arbitration and offers integrated services in such disputes, together with the specialist teams of KPMG Tax, KPMG Accounting and KPMG Advisory.