

VAT implementation on recharges of payroll items

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As is known, taxpayers may occasionally receive invoices for the expenses pertaining to third parties, or they may receive invoices that are mistakenly issued in their own name. In such cases, it may be necessary to recharge these costs to the intended recipient. Recharge invoices issued for this purpose in fact mean that the expenses incurred on behalf of others are recharged to the intended recipient. Such invoices may be subject to VAT depending on whether the former transaction is subject to VAT or not. Furthermore, in the event that a mark-up, commission or service fee or any kind of fee is added on the concerning expenses which will be recharged, the recharge transaction is considered a service provision and is subject to VAT. Considering all these, it may sometimes cause confusion to recharge the payroll items in the invoices received to be recharged to the actual recipient.

Companies can employ their payroll personnel for other companies, and the related payroll costs of the personnel can be recharged to these companies. These payroll costs can be wages, premiums and bonus payments and compensation payments such as severance pay or notice pay or any other payroll item. The important point here is to determine whether the recharge transaction is a cost transfer. According to the understanding of the Ministry of Finance, the recharges of the wages of the employees who are working in companies other than the one on whose payroll they are registered, made by the company that prepares their payroll to the other company for whom the employees physically work are not considered as a cost transfer, or in other words, are not considered as a recharge. The concerning transaction is considered as a service provision, therefore is subject to VAT. Although the former transaction to be recharged is out of the scope of VAT, the invoice to be issued between the two companies is regarded as an invoice issued relating to the performance of a service. Thus, the considered transaction is subject to VAT under the general provisions of the VAT Law.

As stated in Article 61 of the Income Tax Law, the fact that a wage is paid as a premium or bonus or under other names does not change the nature of the wage. Thus, the VAT implementation does not differ between recharging bonus and premium payments, which are in the form of wages, and recharging the wages of the employees. Even though the aforementioned transaction appears to be a recharge of payroll costs, the transaction that a company will perform at the request of another company is considered a “service”, therefore is subject to VAT.

Companies can make compensation payments to their employees for different reasons. From time to time, it may be questioned whether the VAT should be calculated on the invoices to be issued in case that the compensation payments, such as severance pay given to the employees who resign from their jobs, which is applicable under certain conditions, or notice pay given to the employees due to the termination of the employment contract without complying with the periods specified in the Labor Law, are recharged to other companies. Although the compensation payments made directly to the employees are not in the scope of VAT, the compensation amount to be recharged by the employer to another company is not evaluated as a “recharge” by the nature of the transaction. As is known, in order for a transaction to be considered as a recharge, the expense to be recharged should not be the recharging company’s own expense incurred due to its business activities. For this reason, the compensation amount that will be recharged to another company via an invoice is considered as a service provision and subject to VAT.

When we examine the recharge transactions in line with the views of the Ministry of Finance, we can conclude that the fact that the actual transaction to be recharged not being subject to VAT alone is not sufficient to not apply VAT when the related costs are recharged to other companies. In addition to this, it can be said that the main determinant of the VAT implementation in recharge transactions is that whether the transaction is in fact a cost transfer to other companies. The common point of our aforementioned opinions is that there is a business relationship between the company that recharges the costs and the company that is recharged. In such cases, the recharge of some of the cost items which are composed of the costs of the services performed to other companies is not considered as a “recharge of costs” by their nature. One of the determining criteria in this regard is to identify whether the actual recharged cost is in fact an expense incurred on behalf of the counterparty or an expense incurred by a service provided to the counterparty. We are of the opinion that this distinction should be made clearly in order to apply VAT correctly in recharge transactions.

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