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VAT Circular on transactions between related parties

On 18 January 2019, the Luxembourg VAT authorities published a new Circular (N°790), which clarifies the provisions of article 28, §3, of the VAT Law on transfer pricing and VAT.

In this respect, in a supply between closely related parties, for which the agreed or charged fee value is different from the normal value of the operation, the VAT base will be constituted by the normal value of the operation (fair market value).

The notion of closely related parties is defined as all persons or entities among which there exist personal or familial links, organisational links, property links, financial links or legal links.

Accordingly, when the recipient of the operation is not entitled to a 100% input VAT deduction right and the agreed or charged fee value is lower than the normal value of the operation, the parties must submit the supply to its normal value, regardless of the value agreed.

Furthermore, when the supply carried out entitles the provider to a partial input VAT deduction right, notwithstanding the person liable for payment of the tax, the normal value of the operation must always be the reference.

The normal value rule will also apply in the following situations:

- Exempted transactions, according to article 44 of the VAT Law, in which there is no input VAT deduction right and the charged fee value is lower than the normal value. In such a case, the provider's deductible tax amount will be increased. As a result, the normal value of the operation will replace the agreed value.
- Transactions in which there is an input VAT deduction right and the charged value is higher than the normal value. In such a case, the VAT base is increased without economic cause. As a result, the normal value of the operation will prevail on the agreed fee.

In light of these elements, the agreed or charged fee between closely related parties should be closely monitored, in order to determine if the value agreed or charged complies with the fair market value.

Your Arendt VAT team is at your disposal to provide you with further insights.

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