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## The European Commission has confirmed existence of incorrect interpretation and practice in the Republic of Croatia related to deduction of input VAT based on invoices issued by VAT payers applying cash-accounting scheme (so called “R-2” invoices)

After the entrance of the Republic of Croatia into the EU, the Croatian Tax Authorities have issued several opinions stating the Croatian Tax Authorities' interpretation according to which a VAT payer, applying VAT calculation based on issued invoices, is entitled to deduct input VAT based on so called “R-2” invoice even prior to its payment (e.g., opinion of the Croatian Tax Authorities dated 29.07.2013 – class: 410-19/13-01/271, opinion of the Croatian Tax Authorities dated 14.10.2013 – class: 410-19/13-01/533). Based on such interpretation of the Croatian Tax Authorities, such VAT treatment of input VAT deduction based on so called “R-2” invoices has become a long-standing, generally accepted practice in Croatia.

In the first part of 2022, **the Court of Justice of the European Union** issued its judgement in case C-9/20, stating that a VAT payer, applying VAT calculation based on issued invoices, **is not entitled to deduct input VAT based on so called “R-2” invoice prior to the payment of the invoice.**

The publicly available documents published on the web page of the **European Commission** show that, based on the stated judgement of the Court of Justice of the European Union, the Croatian authorities started to question the correctness of the opinions issued by the Croatian Tax Authorities and the established tax practice in the Republic of Croatia in relation to the moment when the right to deduct input VAT arises based on so

listopad 2022.

## Europska komisija potvrdila postojanje pogrešnog tumačenja i prakse u Republici Hrvatskoj vezano za odbitak pretporeza po računima PDV obveznika koji primjenjuju postupak oporezivanja prema naplaćenim naknadama (tzv. „R-2“ računima)

Nakon ulaska Republike Hrvatske u EU, hrvatska Porezna uprava izdala je nekoliko mišljenja u kojima je navedeno tumačenje hrvatske Porezne uprave prema kojem PDV obveznik, koji primjenjuje obračun PDV-a prema izdanim računima, ima pravo po primljenom tzv. „R-2“ računu pretporez priznati i prije nego je takav račun platio (npr. mišljenje hrvatske Porezne uprave od 29.07.2013. - klasa: 410-19/13-01/271, mišljenje hrvatske Porezne uprave od 14.10.2013. - klasa: 410-19/13-01/533). Temeljem takvog tumačenja hrvatske Porezne uprave, takav PDV tretman pretporeza po tzv. „R-2“ računima postao je dugogodišnja općeprihvaćena praksa u Hrvatskoj.

Početkom 2022. godine, **Sud Europske unije** donio je presudu u predmetu C-9/20, prema kojoj PDV obveznik, koji PDV obračunava prema izdanim računima, **nema pravo na odbitak pretporeza po primljenom tzv. „R-2“ računu sve dok taj račun ne plati.**

Iz javno dostupne dokumentacije objavljene na mrežnoj stranici **Europske komisije** vidljivo je da su, povodom navedene presude Europskog suda, hrvatska tijela krenula propitivati ispravnost mišljenja hrvatske Porezne uprave i ustaljenu poreznu praksu u Republici Hrvatskoj u vezi s time u kojem trenutku nastaje pravo na odbitak pretporeza temeljem tzv. „R-2“ računa. Hrvatska tijela su na zaključak iz

called "R-2" invoices. The Croatian authorities reacted in respect of the mentioned judgement because the case law of the Court of Justice of the European Union related to VAT is obligatory for the Republic of Croatia. The document marked „taxud.c.1(2022)7048727-EN“, dated 14.9.2022., issued by „European Commission, Directorate-General Taxation and Customs Union, Indirect Taxation and Tax administration, Value added tax“ provides a content which shows that the European Commission analysed implication of the judgement of the Court of Justice of the European Union in the case C-9/20 based on Croatia's initiation. This document shows that the Croatian authorities tried to provide arguments justifying the interpretation of the Croatian Tax Authorities, which differs from the conclusion of the Court of Justice of the European Union given in the above stated judgement. However, this document also shows that the European Commission rejected arguments provided by the Croatian authorities, i.e., **that the European Commission concluded that it is not correct to deduct input VAT based on so called "R-2" invoice prior to its payment.**

The same tax treatment results from the judgement of the Court of Justice of the European Union in the case C-9/20 as well as from the conclusions of European Commission as stated in the above-mentioned document dated 14.9.2022.

**Consequently, it is important to note that VAT payers, applying VAT calculation based on issued invoices, do not have a right to deduct input VAT based on so called "R-2" invoice prior to its payment, even though long-standing practice and interpretations of the Croatian Tax Authorities, as of the entrance of Croatia into EU in July 2013., were different.**

spomenute presude reagirala jer je sudska praksa Suda Europske unije vezana za PDV obvezujuća za Republiku Hrvatsku. U dokumentu pod oznakom „taxud.c.1(2022)7048727-EN“, od 14.9.2022. godine, izdavatelja „European Commission, Directorate-General Taxation and Customs Union, Indirect Taxation and Tax administration, Value added tax“ objavljen je sadržaj iz kojeg je vidljivo da je Europska komisija analizirala učinke presude Suda Europske unije u predmetu C-9/20 na inicijativu Republike Hrvatske. Iz tog dokumenta je vidljivo da su hrvatska tijela pokušala dati argumente koji bi opravdali tumačenje hrvatske Porezne uprave, a koje se razlikuje od zaključka Suda Europske unije danog u gore navedenoj presudi. Međutim, iz tog dokumenta također je vidljivo i to da je Europska komisija osporila argumente istaknute od strane hrvatskih tijela, odnosno vidljivo je da je Europska komisija zaključila **da nije ispravno pretporez po tzv. „R-2“ računu priznavati prije nego što je takav račun plaćen.**

Isti porezni tretman proizlazi iz presude Suda Europske unije u predmetu C-9/20 kao i iz zaključaka Europske komisije u gore navedenom dokumentu od 14.9.2022.

**Zaključno, bitno je uočiti da PDV obveznici, koji PDV obračunavaju prema izdanim računima, nemaju pravo na odbitak pretporeza po tzv. „R-2“ računu prije nego je takav račun plaćen, iako su dugogodišnja praksa i tumačenja hrvatske Porezne uprave, od ulaska Republike Hrvatske u EU u srpnju 2013., bili drugačiji.**

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