

TAX NEWSLETTER

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UPCOMING TAX CONFERENCE

“Taxes 2013 – VAT/CIT – changes in the law, case law, practice”

Wednesday, 23 January 2013, Warsaw

INTRODUCTION

Dear Sirs,

I warmly invite you to read the last issue of our tax newsletter this year. You will find here information about the major changes in tax regulations that concern, among other things, the introduction of the Business Operation Register. In the upcoming days we will send you a tax alert with detailed information about changes in CIT and VAT effective from 1 January 2013.

I would also like to invite you to the Mazars Tax Conference “Taxes 2013” scheduled for 23 January 2013 during which we will discuss the most important changes to be introduced in 2013 and the potential directions of further changes planned.

On behalf of Mazars Tax Advisory Department I wish you a Merry Christmas and a Happy New Year.

Yours faithfully,
Krystyna Szydłowska

CIT: Passing the Third Deregulation Act

On 30 November 2012 the Act on the reduction of certain administrative burdens for businesses of 16 November 2012 was finally signed by the President and promulgated in the Journal of Laws.

Changes that will come into force under the so-called Third Deregulation Act include:

- Elimination of restrictions in applying the cash accounting method for VAT for minor taxpayers with annual turnover up to EUR 1.2 million (instead of 90-day period following which the taxpayer was obliged to pay the output VAT despite the non-payment of the invoice, it will be possible to declare the tax upon receipt of payment);
- Repeal of the obligation to notify the debtor on the intention of adjusting the output tax;
- Shortening the period of eligibility for bad debt relief (to 150 days);
- Changes concerning the lease contracts, among others, shortening the minimal term of property lease contract from 10 to 5 years; possibility to lease the right to perpetual usufruct of land; introducing an option to change parties during the basic term of the agreement.

The above changes will come into force on 1 January 2013.

CIT: bill amending the Tax Ordinance Act – introducing a Business Operation Register

Member's bill amending the Tax Ordinance Act has just been handed to the Parliament for consideration. The proposed amendment implies introducing article 86a to the above Act which should limit the number of monetary transactions with the "tax havens".

The bill proposes to create a Business Operation Register (hereinafter: Register) which will be under responsibility of the Minister competent for public finance. Operations declared by the taxpayer (in writing or in electronic form) that would be subject to entry in the Register would be business operations defined as any actual flow of assets (e.g. granting a loan, a credit, payment of dividend, sale, rental or leasing transactions).

The conditions that would oblige the taxpayers to enter the transactions into the Register would be the following:

- The value of the business operation – the threshold would be the amount of minimum EUR 500 thousand (it also concerns the total value of business operations carried out between the same entities in a given calendar year);
- Parties to the transaction – if one of the parties is an entity with domicile or seat in the country/territory engaging in harmful tax competition.

It should be underlined that the registration obligation would also apply to taxpayers who do not have their seat on the territory of Poland but carry out transactions of required value on its territory.

If an operation susceptible to be entered in the Register is identified by an authorised body, the territorially competent head of tax chamber would be entitled to impose a fee amounting to 19% of the operation value on the taxpayer.

In line with the bill assumptions the amendment could become effective on 1 July 2013.

VAT: Invoices raised by fuel card issuers documenting the fuel supply do not give the right to deduct the VAT

In the light of the Supreme Administrative Court judgment of 14 August 2012 (ref. no. I FSK 1177/11) a company issuing fuel cards does not make a fuel supply to the customer being the buyer of cards but provides a service consisting in financing the fuel purchase. In such case the actual fuel provider is the petrol station and it is the station – not the fuel card issuer – that should document the fuel supply by the VAT invoice.

In practice, more and more firms opt for buying fuel using “fuel cards”. Fuel cards are very popular especially among transport companies and in those sectors where many employees use company cars. The mechanism of payment by fuel cards is very comfortable as it greatly simplifies the fuel purchase settlements. It is enough that a company concludes a contract with a card issuer for its employees to perform cashless transactions when buying fuel on petrol stations. Once the settlement period is finished, the fuel card issuer raises an invoice documenting fuel purchase in a given period which greatly facilitates the work of accountants.

The discussed case concerned a taxpayer who concluded a contract for cashless settlement of the purchase of fuel and other car consumables. The taxpayer bought fuel and consumables from service partners of the card issuer whereas payments were made to the card issuer. When passing its judgment the Supreme Administrative Court based on the judgment of the European Court of Justice of 6 February 2003 in the case of Auto Lease Holland (C-185/01) and considered that in such situation the fuel card issuer acts as neither buyer nor seller of fuel – he does not actually have an impact on the date of

delivery of goods, the purchase quantity or the fuel price – therefore he cannot be considered to be the one that makes the fuel delivery. As a result, the Supreme Administrative Court called into question the possibility of classifying the discussed transaction as a chain transaction referred to in article 7, section 8 of the VAT Act.

In line with this article, if several entities make the delivery of the same goods in a way that the first provides the product directly to the final buyer, it is considered that the delivery was made by every entity participating in the operation. If the invoices raised by the fuel card issuer (second entity in the chain) do not document the delivery of fuel, there are no bases for treating the transaction as a chain transaction. Furthermore, in the light of the Supreme Administrative Court judgment, it is not the card issuer but the entity in charge of the petrol station that should raise invoices to the fuel buyer because this entity is actually the fuel seller. This would mean that invoices raised by the fuel card issuer are “empty” (they document a transaction that did not actually occur) and hence they do not give the right to VAT deduction.

If the view expressed by the Supreme Administrative Court gains ground, it could have far-reaching implications. Adopting the method of reasoning presented by the Supreme Administrative Court leads to a conclusion that entrepreneurs running petrol stations, fuel card users and card issuers have been incorrectly settling VAT for years. If the jurisdiction approach adopted by the Supreme Administrative Court becomes widespread, these entities would be forced to make VAT adjustments for previous periods and pay interest on the outstanding liabilities.

VAT: “Multisport” card vs. obligation to issue an invoice

In line with the recent Supreme Administrative Court judgment of 1 October 2012 (ref. no. akt I FSK 1895/11), *“the Company is obliged to issue a “re-invoice” for each employee in order to document the transfer of the service under the Multisport programme that it had purchased from the service provider”*. In line with the newly given judgment the transfer of the “Multisport” card providing free access to sport and leisure facilities to employees by the employer is subject to VAT. The Supreme Administrative Court underlined that these cards are not purchased by the company on behalf of the employees but on its own behalf and the subsequent transfer of the card to employees is an activity connected with the re-invoicing of service. Upon purchase of the cards the Company becomes their purchaser and then by making them available to employees it becomes a service provider against remuneration.

- Act of 10 October 2012 on the ratification of the Convention between the Republic of Poland and Canada for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, and the Protocol, signed in Ottawa on 14 May 2012.
- Act of 12 October 2012 on the ratification of the Agreement between the Republic of Poland and the Republic of San Marino for the exchange of information relating to tax matters, signed in San Marino on 31 March 2012.

International tax law: changes in double taxation avoidance treaties – December 2012

Please be informed that on 8 December 2012 the amendments to the acts listed below will become effective:

- Act of 10 October 2012 on the ratification of the Protocol between the Government of the Republic of Poland and the Government of the Republic of Iceland amending the Agreement between the Government of the Republic of Poland and the Government of the Republic of Iceland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed in Reykjavik on 19 June 1998 signed in Reykjavik on 16 May 2012.

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