

Tax Newsletter



NEWSLETTER | Issue # 7 - September 2010

Dear Sirs,

We send you the September edition of Tax Newsletter, dedicated above all to the discussion about the planned changes in the VAT Law, which are due to come into force from 1 January 2011. Additionally, in this edition you will find the comment on the announced changes in the income taxes laws. We will inform you constantly about amendment plans concerning the most important tax laws.

Taking the opportunity, I would like to inform you that on 1 September 2010 Michał Galejczuk, experienced tax expert and advisor, joined the Tax Advisory Department in Mazars.

Enjoy your reading!

Krystyna Szydłowska

EDITORIAL

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VAT Act: planned amendments as from 1 January 2011

The Ministry of Finance has published a bill of 9 September 2010 amending the VAT Act . The key assumptions of the project are presented below.

The most significant change is the increase of the basic tax rate from 22% to **23%** and the decreased rate from 7% to **8%**. Additionally, a new rate of **5%** will be introduced and applied to certain goods currently subject to the 7%, 3% or 0% rates.

What is very important is the parallel introduction of the **new Polish Classification of Goods and Services** (of 2008) in order to establish the scope of applying respective decreased rates.

In the light of these changes we recommend particular care upon verifying VAT rates binding for you as from January 2011. In many cases the decreased VAT rates applied hitherto will be increased to 5%, 8% or 23% but they may be also decreased to 5% or 8% from currently binding 7% or 22%.

Additionally, among the remaining planned changes the following issues demand particular attention:

- Assuming all free-of-charge goods transfers, irrespective of their purpose, to be actions subject to the VAT, if the taxpayer is entitled to decrease the amount of output tax by the amount of input tax on these actions in whole or in part;
- Introducing a compulsory VAT settlement by the buyer if the service provider or the goods supplier is an entity without a seat, a place of permanent residence or a permanent place of business within the territory of Poland;
- Introducing obligatory VAT settlement by the buyer in case of trading in scrap metal and CO2 emission rights, if the buyer is a VAT payer;
- Limiting the right to deduct VAT from invoices if they stipulate the VAT amount with regard to actions for which the amount of the tax is not indicated on the invoice (e.g. in the case of invoice documenting transactions in which the VAT is settled by the buyer);
- Introducing the obligation to correct the input tax settled with the use of the coefficient after the end of year, when the difference between the coefficient value used during the year and its actual value calculated at the end of year does not exceed 2 per cent;
- Changing the regulations pertaining to the settlement of the input tax with the use of the coefficient if its value exceeds 98% and eliminating regulations rendering the deduction impossible if the coefficient value does not exceed 2%;
- Introducing a part of regulations pertaining to the tax cash registers to the Act on VAT, and
- Introducing regulations enabling VAT refund on account of purchasing construction materials for natural persons after increasing the basic rate to 23%.

These regulations are to enter into force on 1 January 2011, with the exception of the provisions pertaining to the tax cash registers which are to enter into force on 1 July 2011.

Assumptions to the Bill on corporate income tax (ACIT) and Bill on the personal income tax (APIT)

The Ministry of Finance has published another version of assumptions for the bill amending the ACIT and APIT (version of 19 May 2010 adopted by the Committee for European Affairs and the Committee of the Council of Ministers, relayed to the Council of Ministers).

Among the suggested changes, attention should be paid to the plans of introducing the principle of continuing valuation in case of a contribution in the form of an enterprise or its organised part.

At present, the binding regulations imprecisely execute the valuation continuation principle and explicitly entitle the taxpayer to such continuation only with regard to the fixed property components which in certain situations rendered possible tax optimisation with regard to making more realistic the value of the contributed property components from their production value to their current market value.

A provision comprehensively regulating this issue would be added to ACIT and APIT. In case of acquiring an enterprise or its organised part by way of a contribution in kind, the value of respective property components included in the acquired property or its organised part would be established:

- 1) at the amount of initial value established in the records of fixed assets (FA) and the intangible assets (IA) of the entity making the contribution: in the case of components considered FA or IA,
- 2) in the value adopted for tax reasons and arising from the abovementioned books of the said enterprise as at the day of acquisition: in the case of other components.

The introduction of the abovementioned changes will adapt the provisions of ACIT and APIT to the Community law (Directive 2009/133/EC), pursuant to which a Member State exempts all profits generated upon asset transfer if the company receiving those assets does not change their tax value. These changes would enter into force on 1 January 2011. The transitory regulations should maintain the invariability of the amortization principles adopted by companies which introduced the property components to FA and IA records prior to the said changes entering into force. Failure to regulate this situation in the transitory provisions may raise doubts as to according to which regulations (new or old) a company should make its writedowns.

Liquidation of investment in external fixed assets as deductible costs

The problem of considering the liquidation of investment in external fixed assets as deductible costs returns again. ACIT does not include losses in external assets in the part subject to writedowns in tax costs.

Therefore, deductible costs can be considered to be the unamortized part of the expenses for the fixed asset arising from its loss, provided that the general premises for qualifying an expense as a deductible cost are met.

The concept of loss is not defined in the ACIT (or APIT). Therefore it is necessary to use the common meaning of this word. A loss can result from acts of God as well as a termination of an agreement constituting the legal basis for using a fixed asset. In such a case further amortization proves impossible. Adopting the opinion that a loss cannot constitute a tax expense results in

excluding the possibility of a part of the value of a property component acquired or produced for the purpose of achieving income to be considered a tax expense.

The only limitation to considering a loss to be a tax expense is contained in Article 16 sec. 1 item 6 ACIT which does not consider losses on account of liquidating not fully redeemed fixed assets as deductible costs if they lose their economic usability due to the change in the business type. Therefore if a loss on account of liquidating a fixed asset results from other causes than those specified in the ACIT, it should be considered a tax expense under general principles.

Tax authorities do not consent to the opinion presented. In his individual interpretation of 31 March 2009 (file no. IPPB3/423-34/09-2/JG) the Head of the Fiscal Chamber in Warsaw stated that non-amortized value of investments in an external fixed asset (external premises) does not constitute a deductible cost. This opinion was based on the assumption that terminating a rental agreement does not constitute an automatic liquidation of a fixed asset.

New rates of fiscal penalties (fines) – the new Penal Fiscal Code

Due to the increase of the minimum work remuneration from PLN 1,317 to 1,386 next year which constitutes the basis for calculating the amount of fiscal fines, as of 2011 the fines for fiscal offences and crimes will be higher.

The fine for a fiscal offence will amount to from PLN 138.60 to PLN 27,720 (today it amounts to from PLN 131.70 to PLN 26,340). The maximum fine imposed by way of a penalty notice will be increased from PLN 2,634 to PLN 2,772. The fine for a fiscal crime will amount to from PLN 462 to PLN 13,305,600 (today it amounts to from PLN 439 to PLN 12,643,200).

Apart from the negative effects in the form of higher fines, the increase of the minimum work remuneration will also influence the increase of the so-called statutory threshold between a fiscal offence and a fiscal crime. This means that a taxpayer will more often be subject to the milder penalty provided for fiscal offences.

From July 2011 the Personal Identification Number PESEL will substitute the Taxpayer Identification Number NIP for natural persons

Pursuant to the assumptions to the amendment of the Act on recording and identifying taxpayers and withholding agents and on changing certain other acts as signed in August by the Minister of Finance, as from 1 July 2011 tax administration will use the data contained in the PESEL register for the purposes of identifying taxpayers and withholding agents who are natural persons not pursuing business activity.

Therefore, the obligation to register and update the data contained in the application for assigning a NIP number will become obsolete; so far it had to be executed by way of filling in the relevant forms and submitting them to the fiscal office not later than within 30 days from the occurrence of the data change.

In the light of the planned changes, apart from updating the data in the PESEL register natural persons will be obligated only to report data complementary to the information contained in the PESEL register to the relevant head of the fiscal office, i.e. the current address of residence and the bank account number.

Another planned change, significant from the point of streamlining and simplifying administrative procedures, is granting NIP numbers to taxpayers obligated to have them in the form of a confirmation of NIP assignment and not as hitherto, by way of an administrative decision issued by the head of the fiscal office. Additionally, the assumptions of changes provide for issuing this type of confirmation to taxpayers commencing their business activity within three working days, as a result of which it will be possible to commence business activity in a much shorter period of time.

Please be informed that this newsletter is of general character and cannot replace specific consulting in individual cases.

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