

Tax Newsletter



NEWSLETTER | Issue # 17 – July-August 2011

Dear Sir or Madam,

In the current issue of our Newsletter, I invite you to read about the most important tax regulations changes, particularly about the new amendment to the VAT Act effective as of 1 July 2011. We have also described the most important changes to the regulations on taxpayer and withholding agent identification (effective as of 1 January 2012) and the currently prepared amendment relating to the reimbursement of company car expenses (mileage allowance). We also encourage you to read about the ECJ judgment on shareholder loans.

We wish you a happy summer holiday season. The next tax newsletter will appear in your mailbox in September.

Yours faithfully,

Krystyna Szydłowska

EDITORIAL

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VAT: Changes to the VAT Act effective as of 1 July 2011

On 1 July 2011 another amendment to the Goods and Services Tax Act (hereinafter “the VAT Act”) came into force.

The Act passed by the Sejm on 9 June 2011 and published on 29 June¹ amends not only the VAT Act, but also the Act on Registering and Identifying Taxpayers and Withholding Agents and the Road Transport Act.

The basis for most changes is Council Regulation (EU) No. 282/2011 of 15 March 2011 (hereinafter “Regulation No. 282/2011”). It is the “successor” to the previous regulation of 2005 (No. 1777/2005). That regulation did not require any particular mode of implementation in national legislative systems. It is applied directly in all European Union member states.

The first change concerns the technical definitions of some terms. **The terms “export of goods” and “electronic services” were modified** (Article 2 item 28 and 26 of the VAT Act, respectively). A change aimed at modifying the Polish regulations to make them consistent with the provisions of Regulation No. 282/2011 covers the following concepts: the place of establishment, fixed establishment, permanent address and the place where a person usually resides.

Moreover, the most important changes resulting from the adaptation of the VAT Act to the provisions of Regulation No. 282/2011 included:

- the manner of choosing the taxation method for intra-Community acquisition of goods (hereinafter: “IAG”) (taxpayers and non-taxable legal persons may choose a taxation method for IAG by submitting a written declaration on such a choice and communicating the number to the person supplying the goods. The choice is binding for the entity for 2 years from performing the IAG);
- extending the taxpayer status for the needs of applying regulations relating to the place of supply of services (Article 28a item 1 letter b of the VAT Act) (a taxpayer is a legal person not being a VAT payer, but obliged to such identification);
- regulating the issue of the place of providing goods transportation services (sec. 1a of Article 28f of the VAT Act):
 - changes relating to the provision of goods transportation services for Polish taxpayers or for taxpayers from third countries in a situation where the transport is performed fully in the territory of Poland or outside the territory of the European Union – **in such a case the Polish taxpayer should issue a VAT invoice (previously the invoice did not include VAT)**,
 - if goods are transported outside the European Union, and the purchaser is a Polish taxpayer, he does not need to recognize service importation.

¹ Polish Journal of Laws, No. 134, item 780

Another change consists in **specifying more precisely the catalogue of recyclable waste**, covered with the reverse charge mechanism and introduced to the VAT Act by virtue of the act of 18 March 2011.² This solution is based on shifting the obligation to settle VAT on supply of specific goods from the supplier to the purchaser (if both the seller and the purchaser are VAT payers). The described **modification is introduced by Appendix no. 11 to the VAT Act**, which contains a catalogue of goods considered as scrap. **Scrap includes now, among others, plastics.**

Another important change **consists in facilitating foreign currency settlements** (i.e. the manner of converting currencies) for entities providing services of access to mass events. Before 1 July, currencies were converted using the exchange rate valid as at the last business day before the day on which the VAT obligation arose; currently the VAT regulations are consistent with the rules for calculating the customs value, i.e. they use the exchange rate from the penultimate Wednesday of the month, which is then used for the whole following month. This change is particularly advantageous in view of the approaching Euro 2012 in Poland and Ukraine.

The last important change to the VAT law consists in adding to the VAT Act chapter 7a providing for **a special procedure for rendering the services of international occasional road transportation of people**. It refers to taxpayers having their place of establishment or fixed establishment from where they provide services (or, if they have none, having a permanent address or a place where they usually reside) in the territory of a member state other than Poland, providing solely the services of international road transport which consists in occasional transportation of people with buses registered in the territory of a member state other than Poland. The newly introduced procedure allows the described group of taxpayers to take advantage of **a simplified registration** with regard to tax identification for VAT purposes, as well as **a simplified method of tax settlement** with regard to services provided by entities indicated above. The above entitlements are conditional on the taxpayer's not using the possibility of deducting input tax, receiving a tax refund or tax difference refund. Unlike the other changes, however, this one will become effective only on 1 January 2012.

² Polish Journal of Laws, No. 64, item 332.

Tax identification: Changes concerning taxpayer and withholding agent identification

From 1 January 2012 natural person taxpayers will use their PESEL number (Polish resident identification number)

Pursuant to the amendment to the Act on Registering and Identifying Taxpayers and Withholding Agents, passed by the Sejm on 1 July 2011, from 1 January 2012 natural person taxpayers who are covered by the PESEL system and who do not conduct business activity or who are not registered payers of the tax on goods and services, will use their PESEL number (Polish resident identification number) as their tax identification number in contacts with tax administration. At the same time, persons using their PESEL number as the tax identification number will no longer be obliged from 1 January 2012 to update their data in the tax office. These persons will not need to report to the tax office any subsequent changes relating to the data contained in the PESEL system – the head of the tax office will update the data automatically after obtaining them from the PESEL system. The data will have to be updated only if the natural person's actual address of residence is different from the registered address.

All other taxpayers will continue to use the NIP number (Tax Identification Number). However, the procedure of assigning this number will be simplified. The NIP number will be assigned using the Central Entity Register of the National Taxpayer Register (this register is to be launched on 1 September 2011) following the submission of an identification application, without the need for the head of the tax office to issue a decision on assigning NIP. The head of the tax office will be obliged to confirm the fact of assigning NIP within 14 days of the date on which the correct identification application was received by the head of the tax office.

The Central Entity Register of the National Taxpayer Register was created to shorten the information flow in tax offices and speed up the process of servicing taxpayers. The register will contain registration information from the PESEL system, which will be binding for the tax administration. It will also contain data from some documents related to obligations following from tax regulations.

International tax law: The Isle of Man – tax haven no more

Ratification of the treaty with the Isle of Man

The Polish Parliament ratified tax treaties between the Isle of Man, one of the British Isles, and Poland for the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic, as well as regulating the issues of settling income from employment and pensions, as well as exchange of information. The adoption of these regulations means that the Isle of Man will be deleted from the list of territories applying harmful tax competition, known as “tax havens”.

So far, the Isle of Man has concluded 16 treaties on exchange of tax information with, among others, France, Germany, Ireland, Portugal and the United States. The ratification act will come into force 14 days after its announcement.

PIT: New mileage allowance rates

The Ministry of Infrastructure plans to introduce higher rates for passenger cars used for business purposes.

Pursuant to a draft amendment to the ordinance on the terms of determining and the manner of reimbursing costs of using passenger cars, motorcycles and mopeds not owned by the employer for business purposes, currently prepared by the Ministry of Infrastructure, employers will reimburse their employees for the costs of using vehicles for business purposes at higher rates than currently. According to the draft amendment to the ordinance, the maximum rates for 1 kilometer of mileage will be as follows:

- 1) for passenger cars:
 - a) with cylinder capacity up to 900 cm³ – PLN 0.97 (currently – PLN 0.5214),
 - b) with cylinder capacity over 900 cm³ – PLN 1.01 (currently – PLN 0.8358),
- 2) for motorcycles – PLN 0.92 (currently – PLN 0.2302),
- 3) for mopeds – PLN 0.81 (currently – PLN 0.1382).

The increase in the maximum rates provided for by the ordinance will be important for employers reimbursing employees for the costs of using private vehicles for business trips, as pursuant to the tax regulations only costs reimbursed at the maximum acceptable rates per 1 kilometer of mileage are tax deductible for the employer and, at the same time, are treated as the employee's income exempt from taxation. Unfortunately, it is not known yet when the changes will come into force.

Tax on civil law transactions: ECJ judgement on shareholder loans

Taxpayers can apply for a refund of the tax on civil law transactions paid on a loan granted to a company by a shareholder in years 2007-2008.

In its judgment of 16 June 2011, the European Court of Justice ruled that the reintroduction of the civil law transaction tax on shareholder loans by the Polish legislator in 2007 was against the EU law. The judgment is a result of the Regional Administrative Court in Gliwice submitting in March 2010 to the European Court of Justice a reference for a preliminary ruling to verify the compliance of Polish regulations with the Community law.

The tax exemption for loans granted to a company by its shareholders was regulated on the EU level in the so-called Capital Directive (i.e. Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, amended by the Council Directive 85/303/EEC of 10 June 1985), whose goal was to limit the tax burdens and support free capital flows between EU member states.

When Poland joined the European Union, it decided to implement the Capital Directive in the Polish legal system. However, after less than three years, it reintroduced taxation of loans granted to companies by their shareholders. This tax obligation was valid until the end of 2008.

In its judgment (C-212/10), the Court of Justice pointed out that Article 4(2) of the Capital Directive must be interpreted as precluding a member state from reintroducing a capital duty on a loan taken up by a capital company, if the creditor is entitled to a share in the profits of the company, where that member state has previously waived the levying of that tax. The judgment is extremely important for many taxpayers who in years 2007-2008 paid the tax on civil law transactions, as they can now apply for a refund of that tax.

If a taxpayer has not yet applied for a refund, he can do so by the end of the limitation period by submitting an application for the confirmation and refund the overpayment and by correcting the tax return. Persons applying for the refund should not expect that such an application could be challenged by tax authorities.

Court cases which were suspended in anticipation of the ECJ judgment should be reinitiated and ruled in favour of the taxpayers.

Also those taxpayers who received a negative decision regarding the overpayment confirmation, can submit an application for resumption of the proceedings within one month of the date of publication of the ECJ judgment in the Official Journal of the European Union.

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