

Tax News (July 2015)

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Changes to the electronic VAT administration system

On 27 July 2015 the Law of Ukraine No.643-VIII "On Amending the Tax Code of Ukraine Regarding Improvement of VAT Administration" dated 16 July 2015 (the "**Law No.643-VIII**") became effective.

Starting from 1 August 2015 the following amendments to the Electronic system of VAT administration entered into force:

- penalties should not apply to the overdue registration of VAT invoices in the Unified Register of VAT Invoices ("**Register**") issued before 1 October 2015;
- taxpayers may credit the input VAT specified in VAT invoices recorded in the Register during 365 calendar days from the date of issuing of such invoices;
- requirement to recalculate the share of capital assets purchased after 1 July 2015 which are used in VAT-able transactions at the end of the first, second and third year of such use has been terminated;

- address of the seller and type of contract have been excluded from the list of mandatory details of the VAT invoice;
- term for registration of VAT invoices issued during the period from 1 July to 30 September 2015 in the Register has been extended from 15 calendar days to up until the 31st calendar day;
- starting from 1 August 2015 additional electronic VAT accounts will be opened for agricultural producers subject to specialized VAT treatment for transfer of VAT liabilities incurred in the course of their business activity;
- the limit to which VAT payers are allowed to issue VAT invoices / VAT adjustments in the Register will be “reset” as of 1 July 2015.

Ukraine-Ireland double tax treaty ratified

The President of Ukraine signed the Law of Ukraine No. 606-VIII “On Ratification of the Convention between the Government of Ireland and the Government of Ukraine for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains (“**Convention**”) and Protocol thereto” dated 15 July 2015.

Convention and Protocol thereto become effective as of the date of receipt of the last written notice regarding completion of all internal procedure envisaged for due effectiveness of the respective documents by the Contracting States.

Changes to the recognition of input VAT as VAT credit

On 1 July 2015 amendments to Article 198 of the Tax Code of Ukraine (“**TCU**”) regarding treatment of input VAT as VAT credit and recognition of VAT liabilities became effective.

According to the amended Article 198 of the TCU, the taxpayer may treat VAT liabilities recognized upon purchase of goods/ services and fixed assets as its VAT credit regardless of:

- whether the respective goods/ services and fixed assets are used by the taxpayer in VAT transactions within its business activity;
- whether the respective goods/ services and fixed assets are used by the taxpayer in non-VATable or VAT exempt transactions.

Tax clarification regarding recently introduced amendments to the electronic VAT administration system

On 30 July 2015 the Taxpayer’s Services Department commented on the measures, which are to be conducted by the State Fiscal Service of Ukraine (the “**SFSU**”) aimed at implementation of the provisions of the Law No.643-VIII.

Among such measures are, in particular, the following:

- on 2 August 2015 at 23:00, registration of VAT invoices, VAT adjustments, as well as submission of VAT returns will be paused;
- on 3 August 2015 at 00:00 the amount of VAT liabilities available on the electronic VAT accounts of VAT payers for registration of VAT invoices/ VAT adjustments in the Register will be “reset”;
- starting from 4 August 2015 registration of VAT invoices and VAT adjustments issued before 1 July 2015 should be made without limitations in respect of the amount to which taxpayers are allowed to register VAT invoices/ VAT adjustments;
- until 20 August 2015 the amount to which VAT payers are allowed to register VAT invoices/ VAT adjustments in the Register will be increased by the amount of VAT liabilities as of 1 July 2015 reported in the line 24 and 31 of the VAT return for the II quarter of 2015, provided that the respective VAT payers submit VAT returns on a quarterly basis.

Tax clarification regarding amendments to the procedure of completion of VAT invoices

On 29 July 2015, the SFSU published the Letter No. 27651/7/99-99-19-03-02-17 "On Amending the Requisites of VAT Invoice" in which it stated that starting from 29 July 2015 VAT payers should not fill the following lines of the VAT invoice/ VAT adjustment:

- address (tax address of the seller);
- address (tax address of the buyer);
- phone number (of the seller and of the buyer);
- type of the contract, its number and date;
- settlement arrangements.

In addition, the SFSU reminded that completion or non-completion of optional lines does not lead to the invalidity of the respective VAT invoice/ VAT adjustments unless other grounds exist.

Tax clarification regarding the treatment of recoverable VAT

In the Letter No. 11505/6/99-99/19-03-02-15 "On the Treatment of Recoverable VAT Accrued in the Previous Reporting Periods in the Electronic VAT Administration System" dated 3 June 2015 the SFSU stated that after an ad-hoc tax audit of VAT returns specifying the treatment of recoverable VAT as of 1 January 2015, the SFSU automatically increases the amount to which taxpayers may issue VAT invoices. The respective increase should be treated by taxpayers as VAT credit in the same reporting period, in which the increase takes place.

Accordingly, if the respective increase was performed in March 2015 based on the January 2015 VAT return, VAT credit should be increased in the VAT return as of March 2015.

Tax clarification regarding VAT refunds

The SFSU published the Letter No. 634/6/99-99-19-03-02-15 "On VAT Refunds from the State Budget of Ukraine" dated 10 February 2015 in which it commented that: (i) the outstanding amount of VAT submitted by taxpayers for refund in the reporting periods before 1 February 2015 via offset of future VAT liabilities, (ii) negative VAT calculated in accordance with the applicable formula, and (iii) remaining negative VAT after refunds made in the previous reporting periods reported before 1 January 2015 should:

- increase the amount to which taxpayers may register VAT invoices/ VAT adjustments in the Register with simultaneous increase of VAT credit specified in the VAT return in the same reporting period in which the increase took place without conducting ad-hoc tax audits (however, the respective amount could be audited by the tax authorities).
- should be returned to the taxpayer pursuant to the procedure effective on 31 January 2014.

Tax clarification regarding application of the reduced ratio to the unified social security tax liabilities by newly established entities

In the Letter No. 4348/M/99-99-17-03-01-14 dated 8 May 2015 the SFSU stated that calculation of the reduced ratio applicable to the unified social security tax liabilities should be made based on the average monthly rates of 2014. Whereas the newly established entities do not have the respective average monthly rates of 2014, application of the reduced ratio to the unified social security tax liabilities by such entities is impossible.

Tax clarification on the tax treatment of repaid financial aid in 2015

On 18 June 2015 the SFSU in its Letter No. 12810/6/99-99-19-02-02-15 commented that starting from 1 January 2015 the taxable fiscal result of taxpayers should be decreased by the amount of repayable financial aid received by such taxpayers before 1 January 2015 from entities that are not registered as a CIT payers, provided that such repayable financial aid had been included into the taxable income of the respective taxpayers in the relevant reporting period.

Tax clarification regarding penalties for failure to pay advance CIT installments

The SFSU clarified that failure to pay advance CIT instalments in 2015 is subject to penalties notwithstanding the moratorium on penalties effective in 2015.

In particular, the following penalties should apply:

- 10% of the settled amount of outstanding CIT liabilities for delay in payment of up to 30 calendar days;
- 20% of the settled amount of outstanding CIT liabilities for delay in payment in excess of 30 days;
- late payment interest.

Tax clarification on issuing VAT invoices in loss-making transactions

Tax clarification letter published by the local tax authorities in Zaporizhya region states that if the cost of services exceeds the amount of advance payments received (which served as basis for recognition of VAT liabilities upon receipt of the advance payment, and registration of the VAT invoice in the Register), VAT payers should issue an additional VAT invoice in respect of the difference between the costs of services and their contractual value.

The upper left corner of the respective VAT invoice should be marked with “X” and specify that the respective VAT invoice was issued in respect of the difference incurred between the costs of services and their contract value (reason No.17).

The additional VAT invoice should be recorded in the Register.

Tax clarification on the use of funds erroneously transferred to the electronic VAT account

Tax clarification letter dated 27 July 2015 states that if on the date of submitting the VAT return the amount of VAT held at the electronic VAT account exceeds the amount of VAT liabilities payable according to the data in the respective VAT return, the taxpayer has the right to submit a statement attached to the VAT return, based on which the excessive amount should be transferred to the taxpayer's current bank account.

Transfer of funds is performed within 5 working days following the deadline envisaged for the settlement of VAT liabilities.

Please note that previously the SFSU stated that funds transferred on the electronic VAT account of the taxpayer by mistake could not be transferred back to the taxpayers' bank account. The respective funds could be offset against future VAT liabilities, used for reimbursement of VAT liabilities recognized on the cost of production, which were subsequently treated as VAT credit, or used for other productive purposes.

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If any additional advice is required, please do not hesitate to contact **KPMG Tax and Legal Team** – [Sergey Popov](#), [Oksana Olekhova](#), [Andriy Kriakushin](#) (+380 44 490 5507).