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## Draft amendments to the VAT Act and other Acts A selection of the most important proposed changes

**On 23 September 2016 the Ministry of Finance published the amendment draft to the VAT Act, the Penal Fiscal Code and the Tax Ordinance Act (so-called “anti-fraud package”). Selected amendments and solutions, which according to the draft should come into force on 1 January 2017, are presented below.**

**A comeback of the “sanctions in VAT” – 30 percent of the underestimated value of output VAT or overstated return of input VAT and 100 percent of the amount for issuing so-called “blank invoices”.**

The draft proposes the reintroduction of “sanctions in VAT” amounting to 30 percent of the underestimated liability amount or overstated return (sanctions in a similar form were in place until the end of November 2008).

Additionally, the draft introduces new sanctions for invoicing so-called “blank invoices” (where no actual transactions took place) which would be equal to 100 percent of the VAT from the invoice.

**An extension of the scope of reverse charge**

According to the draft, the list of the goods and services covered by reverse charge mechanism would be extended, e.g. processors (limit above PLN 20 000) and some forms of silver and gold.

**“Registration deposit” for some entities which start their business activity, which determines registration for the VAT purposes**

In case of entities which are at risk of tax arrears and entities which use virtual offices, registration might depend on a registration deposit in the amount from PLN 20 000 up to PLN 200 000.

The risk of tax arrears should be estimated by the head of the tax office, based on relations of newly registered entities with registered entities which have already unpaid tax liabilities.

**The extension of the VAT refund duration with regard to verification of refund legitimacy, including the verification of the contracting party**

According to the draft, the tax office would gain the possibility of extending the VAT refund period in order to verify the refund legitimacy.

Furthermore, the tax office during the verification procedure would have the possibility of checking the settlements of the taxpayer’s contacting party.

**The possibility of refusal of VAT registration**

According to the planned changes, an element of the VAT registration procedure will be the verification of the newly registered entity.

In cases where it occurs that the entity does not exist or there is no possibility of contact with it, the head of the tax office may refuse VAT registration.

In addition, the draft assumes the possibility of removing the registered entities from list of the VAT taxpayers (e.g. because of not submitting a VAT return, issuing the blank invoices, etc.).

**Changes regarding the 25-day VAT refund**

According to the draft of the Act, there will be changes regarding the possibility of application for short term (25 days) VAT refunds.

The proposals mainly focus on payments through bank accounts, submission of bank transfer confirmations, at least 2-year registration for VAT purposes, etc.

**Removal of the VAT exemption for ancillary services (other than financial ones)**

The draft assumes the removal from the VAT Act of article 43 paragraph 13 concerning the VAT exemption for services which are an element of the services mentioned in paragraph 1 point 7 and 37-41, which are regarded as a whole and are considered appropriate and necessary to provide the exempted service.

According to justification of the draft, the amendments are aimed at adjusting the provisions of the VAT Act with the Directive, including the judgment of the CJEU in the case of Aspiro S.A (C-40/15) concerning the taxation of loss adjustment services provided for insurance companies.

In practice, the amendments could affect the possibility of applying VAT exemptions to a broader scope of services acquired by financial institutions, therefore, the value added tax could constitute for them an additional economic burden.

**Introducing the liability of the proxy of the registered entity and the joint and several liability for the purchaser for the supply of the HDD, SSD and stretch foil**

The draft provides for imposing joint and several liability for proxies for the first 6 months of operating.

An extension of the applicable rules concerning liability of the purchaser for the supply of the HDD, SSD and the stretch foil (foil for wrapping pallets) would also be introduced.

According to justification of the draft, the reason for these changes is the growing problem of tax frauds in this area.

**A limitation of quarterly VAT settlements**

According to the draft of the Act, large taxpayers (for the whole period of registration) and the entities which are just starting their economic activity (which means they are in the first year of conducting business activity) could not apply quarterly VAT settlements.

**The modification of the regulations regarding “the guarantee deposit” and joint and several liability**

The present provisions concerning “the guarantee deposit” and joint and several liability of the purchaser would be stricter.

The regulations assume additional indications of a purchaser’s release of the supplier’s tax liabilities and introduce additional requirements concerning “the guarantee deposit”.

**An obligation of submitting electronic returns for some entities**

From 1 January 2017 the obligation of submitting of the electronic VAT returns would cover, among others, taxpayers which carry out intra-EU transactions and which are covered by the reverse charge mechanism.

Ultimately, the obligation of submitting electronic VAT returns should cover all taxpayers (from January 2018).

**New exemption threshold**

Raising the limit of the VAT exemption from PLN 150 000 to PLN 200 000.

The draft proposes an increase of the turnover limit to which the taxpayers can apply the VAT exemption. The limit for small businesses would rise from PLN 150 000 in 2016 to 200 000 in 2017.

**Amendments in the Fiscal Penal Code**

The draft proposes stricter penalties for individuals guilty of tax frauds.

For issuing so called “blank invoices” above 1 million PLN the perpetrator may even receive a prison sentence.

**New regulations from the New Year**

According to the draft, the majority of provisions should come into force from 1 January 2017.

In accordance with justification, the intention of the legislator is, most of all, reducing the number of abuses concerning VAT frauds.

If you have any questions regarding the issues discussed in this alert please do not hesitate to contact us.

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