

Changes in value added tax regulations

On 30 October 2008, the Senate passed a resolution concerning amendments to VAT Act which on 15 October were passed by the Lower House of the Parliament (Sejm). Most of the changes which the amendments introduce will come into force on 1 December 2008. The amendments include a host of changes which will undoubtedly be beneficial for taxpayers. **The resolution of the Senate does however introduce certain modifications to the initial text of the amendments passed by the Lower House of the Parliament.** Below, we set out a short summary of the most significant changes to the regulations.

Shorter time limits for VAT refunds

The new regulations will shorten the basic time limit for refunds of input VAT surplus to 60 days. However, at the same time the right to apply for an accelerated refund within 25 days will remain.

The extended, 180-day time frame for refunds will remain only for taxpayers who are carrying out taxable activity for less than 12 months (**in accordance with the decision of the Senate, new taxpayers will also be covered by the 60 day regulations**) as well as taxpayers who did not carry out any taxable actions during a settlement period.

Abolition of the guarantee deposit procedure

The amendment will also bring an end to the deposit guarantee procedure, whose compatibility with EU regulations was questioned by the European Court of Justice. This scheme will be replaced by an obligation to provide an alternative form of security (such as a bank or insurance guarantee, or a bill of exchange) in an amount equal to that of the expected VAT refund.

An end to the 30 per cent sanction

The amendments will end the penalty rate provisions which impose a 30 per cent penalty.

Introduction of simplified VAT settlements for call off stock

As a result of the changes, overseas companies which supply goods to the warehouses of Polish purchasers and where delivery occurs only at the moment when the product is transferred from the warehouse to the production line by the purchaser, will not be obliged to register for VAT in Poland. The obligation to settle VAT with respect to intra-Community acquisitions will rest with the Polish buyer of the goods.

Simplification of the conditions for taking advantage of bad debts relief

The amendments will also relax the rules for taking advantage of the bad debts relief. From 1 December 2008, in order to benefit from this relief, the debt will need to have remained unpaid for 180 days.

Furthermore, a purchaser who does not settle an invoiced amount will be obliged to correct the VAT return in which the VAT relating to the unpaid

invoice was deducted (and may potentially also be required to pay interest on this amount).

Sale of an "organised part" of an enterprise

In accordance with the amendment, the sale of an "organised part" of business will be considered a transaction out of scope of VAT (currently such an exclusion applies only to the sale of a business or a branch which prepares its own balance sheet).

The definition of an organised part of an enterprise in the amendment is consistent with the definition contained within income tax regulations. An organised part of an enterprise should be understood as an organisationally and financially distinct set of tangible and intangible assets, including liabilities, within an existing enterprise, dedicated to the realisation of specific business targets, which at the same time could act as a separate entity realising these targets on its own.

Settlement of VAT due with regard to imported goods

The new regulations introduce the possibility of settling VAT due on the import of goods in a cash-flow

neutral manner (similarly as with an intra-Community acquisition of goods).

However, only a limited group of taxpayers will be able to take advantage of this type of settlement as it will apply only to those who use the simplified procedure for the import of goods and whose settlement period is a calendar month.

Right to file quarterly VAT returns

The amendment widens the possibility of filing quarterly returns to all taxpayers (currently only small businesses can do this). A condition will be advance notification of the authorities of this intention in writing. Tax will continue to be due monthly, although the payments relating to the first two months of the quarter will be treated as prepayments (the exception to this rule will be small taxpayers, which will be able to make quarterly payments).

Increase in the time limit for deduction of VAT

Currently, taxpayers are able to deduct tax in one of two settlement periods (principally in the period when the invoice is received, or in the following period). In accordance with the changes passed by Sejm, from 1 December 2008, a taxpayer who does not deduct tax in the settlement period in which the invoice was received, will be able to make a deduction of the tax due in the tax declarations relating to subsequent periods, although not later than in the last period of the fiscal year (in the case of VAT this is always the calendar year).

In accordance with the changes proposed by the Senate, the taxpayer will have the right to deduct VAT in the three subsequent settlement periods.

Should you be interested in further information concerning these amendments, please contact us.

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