

# Tax Alert

Indirect Tax

## Amendments to the Value Added Tax Act

On 15 October 2008 the Lower House of Parliament passed a bill amending the *Value Added Tax Act of 11 March 2004* (hereinafter the Act), remitting it to the Upper House for consideration. After the Lower House votes to accept or reject the amendments put forward by the Senate (if any), the Act will be forwarded to the President for signature. Most of the amendments will take effect on 1 December 2008, except for those governing among others the quarterly reporting of VAT, which are scheduled to come into force on 1 January 2009.

The Act introduces a number of provisions that simplify the VAT reporting procedure and harmonise Polish law with Community legislation. To benefit from the schemes set out in the Act, taxpayers have to analyse and prepare for them. To help you become familiar with the changes, we have divided them into those that are favourable (as they may, for example, improve your cash flows or reduce your overall tax burden) but require certain decisions and actions on your part, and the other changes which may also prove to have an impact on your business. Therefore we recommend that you should review all the sections that follow.

### Changes simplifying the VAT reporting procedure

#### *Quarterly declarations*

Taxpayers will be given the opportunity to choose the quarterly VAT reporting scheme, one of the key changes introduced by the Act. Quarterly declarations should be filed by the 25th day of the month following each quarter.

The choice of the quarterly reporting scheme implies that a taxpayer will have to pay advance VAT for the first and the second month of a quarter in the amount corresponding to 1/3 of the VAT liability reported in the declaration filed for the preceding quarter. Advance tax payments should be made by the 25th day of the month following each month for which an advance VAT payment is made. Within the deadline for filing a quarterly declaration, i.e. by the 25th day of the month following the quarter in which the tax became due and payable, taxpayers will be required to calculate and pay the tax for quarterly periods, in the amount corresponding to the difference between the VAT liability for a given period and the cumulative advance tax paid.

The simplified scheme may be used provided that a taxpayer notifies his tax office of his choice not later than the 25th day of the second month of a quarter. If no such notification is filed, a taxpayer is deemed to have chosen the monthly VAT reporting scheme.

### *Call-off stock*

The reporting procedure for supplies made using call-off stock will also be simplified. Under the current law, a foreign company operating a warehouse of spare parts or semi-finished products in Poland (which is most often located on the premises of an end-user or in the vicinity thereof) is generally required to register as a VAT payer to apply tax to movements of goods to Poland from other Members States in an intra-Community acquisition and a domestic supply of the goods to the end-user. The new law makes it possible to transfer the requirement to apply tax for the intra-Community acquisition and the supply of the goods to the acquirer of the goods in Poland, releasing the foreign company from the obligation to register for VAT thereby. In consequence, for the acquirer, who reports acquisitions through a call-off stock using the reverse-charge mechanism, the transactions will not generate any excess of input tax over output tax.

Taxpayers cannot benefit from the simplified call-off stock scheme unless they meet several conditions, for example the supplier cannot be registered for VAT in Poland or the goods in the warehouse can be used solely for manufacturing or service activities (no trading is allowed). Additionally, a taxpayer operating a call-off stock warehouse should notify his tax office in writing of his intention to operate it before goods arrive in storage for the first time.

The revised act also modifies the provisions setting out the tax point of supplies and acquisitions of goods using a call-off stock.

### *Reporting of VAT on imported goods in a declaration*

One of the most important simplifications introduced in the amendments is that taxpayers will be able to report VAT on import of goods in a tax declaration. Now a taxpayer importing goods must first pay the tax to a customs office within 10 days from the customs authorities' notification, to subsequently claim a refund of that tax as input tax in a VAT declaration. The result of the change is that the output VAT on import of goods can be reported in the declaration for the month in which the tax became due and payable and shown as input tax in the same amount (provided that the imported goods are used for purposes of taxable operations).

This simplified scheme will affect only goods placed under the simplified procedure in which the reporting period is the calendar month, in the territory of the country. Additionally, to benefit from the scheme a taxpayer will have to submit for example a certificate that he has no tax arrears and provide security corresponding to the tax liability to be reported in the declaration.

Taxpayers will also be required to notify the customs office director and the tax office director, in writing, of their intention to report VAT on imported goods in a tax declaration and to return to the previous scheme.

### *Bad debts allowance*

The amended law liberalises the provisions governing bad debts and allows a taxpayer to adjust his sales and output tax where a receivable is not paid within 180 days from the payment deadline set out in the contract or invoice.

## **Other important changes**

### *Disposal of an organised part of a business*

Under the revised VAT Act, VAT is no longer chargeable on transactions involving disposal of a business and an organised part of a business. The amendments set out a definition of an organised part of a business, which is consistent with the definition provided in the Corporate Income Tax Act.

### *Small gifts threshold revised upward*

The threshold of gifts classified as gifts of negligible value has been revised from PLN 5 to PLN 10. The revised provision expressly states that the threshold refers to a unit price at which a gift is bought (without VAT) or a unit cost of developing it.

### *Establishing and transfer of perpetual usufruct of land*

The definition of a supply of goods has been extended to include the establishing and transfer of perpetual usufruct of land. The tax point on establishing perpetual usufruct of land will be the day when the payment arrives in whole or in part, not later than the payment deadlines of the particular perpetual usufruct fees.

### *Services provided by foreign suppliers*

For services supplied by taxpayers not having their registered office, fixed place of business or permanent residence in the territory of the country, the taxpayer will be the service recipient only. As regards VAT to be reported on services supplied by a foreign service provider having a fixed place of business in Poland, it will be reported only by the service provider, not by either of them (i.e. the service provider or the service recipient) under the current law.

### *Place of supply of intangible services*

The Act affects the place of supply of services whose place of supply under Community law is the service recipient's country. Under the revised law, the statistical classifications currently in use can be used on an auxiliary basis and will not limit the scope of the services whose place of supply may be moved to another country. This applies particularly to advisory, engineering, legal, accounting and similar services or other services such as data processing, information supply or translation services.

### *Requirement to hold a confirmation of receipt of a correction invoice*

Following the delivery of the Constitutional Tribunal's judgement of 11 December 2007 (U 6/06), the lawmaker was obliged to move the provisions of the regulation on VAT invoices governing adjustments of sales as a result of correction invoices to the VAT Act. The provisions have been moved to the VAT Act in an almost unaltered wording. Under the revised law, the requirement to hold a confirmation of receipt of a correction invoice in order to make an adjustment of sales will continue to apply.

### *Exchange rate*

The VAT Act now includes a provision governing translation of sums denominated in foreign currencies to PLN. Where a sum taken to calculate the taxable base is stated in a foreign currency, it shall be converted to PLN using the average exchange rate published by the National Bank of Poland (NBP) as at the last business day preceding the tax point date. However, for imported goods the conversion is to be made in accordance with customs law, i.e. using the average rate published by the NBP on the last but one Wednesday of a month and valid for the succeeding month.

### *VAT on imported goods with a single permit*

The revised law sets out the VAT treatment of goods situated in the territory of the country for which a single permit has been issued (a simplified measure in customs law effective from 1 January 2009 whereby customs duties may be paid in one country even if the goods are situated in more than one Member State). The Act states that VAT on imported goods can be reported in a tax declaration (if certain conditions are met) or paid to a customs office by the 16th day of the month following the month of the tax point of imported goods. Taxpayers will be required to calculate and report their output tax on imported goods in the so-called import declaration within the same deadline.

### *0% VAT rate on an intra-Community supply of goods*

The law revises the deadline for collecting the documents giving a taxpayer the right to apply the 0% VAT rate to an intra-Community supply of goods, and the VAT treatment of that supply where the required documents are not available. Under the amended provisions, if a taxpayer does not hold the required documents before the deadline for a tax declaration expires, he will be in a position to defer reporting the transaction by one or two reporting periods depending on his reporting scheme. It is only if the documents are not collected after that period that the taxpayer will have to report the transaction as a domestic supply.

### *Taxation of real property*

The Polish provisions governing taxation of disposal of real property have been harmonised with Community law. Under the revised VAT Act, supplies of buildings, constructions or their parts will be exempt from VAT. The exemption will not apply to supplies carried out within the first settlement or prior to it and supplies made within two years from the first settlement.

Alternatively, a taxpayer may choose not to apply the exemption and may charge tax on supplies of buildings, constructions or their parts provided that he meets numerous conditions set out in the VAT Act.

### *Deduction point*

The period within which a taxpayer may reduce his output tax by the amount of input tax with no need to file an adjusted tax declaration has been extended. After the Act takes effect, deductions will be made throughout the tax year, not later than in the declaration for the last period of a given year.

The revised law also liberalises the provision (which is incompatible with Community law) under which output tax cannot be reduced by input tax unless the right to dispose of goods as owner has been acquired or a service supplied. This condition will have to have been met by the deadline for filing a tax declaration for a given reporting period, not the end of a reporting period (which is the present case).

#### *Refunds of VAT*

After the amendments come into force, refunds of input tax will not be conditional on whether there are any taxable operations. The provisions governing the so-called advance refunds of tax have been repealed.

The deadline for making VAT refunds has been shortened to 60 days regardless of the type of acquisitions and the taxation of supplies of goods. The exception will be taxpayers who have been carrying on business for less than 12 months, the standard deadline being 180 days in this case. The shorter deadline will continue to apply to refunds of input tax on the acquisition of goods and services which are classified as depreciable fixed assets and intangible assets under income tax law as well as to land and perpetual usufruct of land if they are classified as the acquirer's fixed assets or intangible assets.

Additionally, the current deposit has been replaced with security whose value corresponds to the amount of the VAT refund sought. For example, security can be provided by taxpayers who have been carrying on business for less than 12 months if they want to obtain a VAT refund within a period shorter than 180 days. The Act sets out the rules of providing and returning security in detail.

#### *Deductions of input tax and tax deductible costs*

The provision stating that input tax cannot be deducted unless the underlying expenses are deductible for income tax purposes, which is incompatible with Community law, has been repealed. The only condition that remains applicable is that an expense must be linked with a taxpayer's taxable operations.

#### *30% VAT penalty cancelled*

Under the revised law, an understatement of a VAT liability or an overstatement of a VAT refund will not carry the risk of an additional VAT liability corresponding to 30% of the understatement/ overstatement. Furthermore, under the transitional provisions any proceedings instituted and not closed with a final decision before the Act comes into force are governed by the revised VAT Act. This means that the tax authorities will not be in a position to impose a 30% penalty even in the case of events that occurred prior to the new VAT Act taking effect.

The penalty will be inflicted only on taxpayers who fail to record their sales using cash registers. In this case the tax authorities will be in a position to apply an additional tax liability corresponding to 30% of the input tax on the acquisition of goods or services not recorded through a cash register.

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