

## The Tax on Goods and Services (VAT)

### Introduction

VAT was introduced in Poland in 1993. Since 1 May 2004 it has been harmonized with the common system of VAT binding in the Member States of the European Community. VAT is a turnover tax. Its main features are:

- **neutrality** – the actual burden of tax rests upon the final consumer,
- **universality** – resulting in, on the one hand, in charging VAT upon each stage of turnover and, on the other hand, levying VAT upon a relatively wide range of goods and services,
- **double taxation avoidance rule** – which is to prevent double taxation at the same stage of turnover,

- **Observation of competitiveness rule** – which is to ensure the same taxation rules apply for all taxpayers in the Member States.

### Legal basis

Legal provisions governing VAT issues may be divided into two groups:

1. Community law,
2. National law.

**Community law** – in particular, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

**National law** – the act on Value Added Tax of 11 March 2004 (Journal of Laws No 54, item 535, with amendments) and over 30 executive decrees, of which the most important is the Decree of the Minister of Finance of 28 November 2008 regarding execution of certain provisions of the act on Value Added Tax (Journal of Laws No 212, item 1336, with amendments) and the Decree of the Minister of Finance of 28 November 2008 regarding reimbursement of tax to certain groups of taxpayers, reimbursement of tax on a prepayment basis, issuance of invoices and the manner of their storage, and lists of goods and services which can not enjoy tax exemptions (Journal of Laws No 212, item 1337, with amendments).

### Objective scope of taxation

Of key importance to taxation is the objective scope of taxation, which determines chargeable events. Each person who professionally carries out the below stated activities:

- supply of goods (meant as transfer of the right to dispose of tangible property as owner) effected for consideration,
- supply of services for consideration; supply of services is meant

as any transaction which does not constitute a supply of goods,

- export of goods,
- importation of goods,
- intra-Community supply of goods,
- intra-Community acquisition of goods,

is subject to taxation.

### **Taxable persons**

In principle, persons conducting taxable activities within the framework of their economic activity, whatever the purpose or result of that activity, are considered taxable persons. The term "taxable persons" embraces natural and legal persons, and organisational units which have no legal personality (eg. civil, general partnerships, etc.).

Economic activity comprises all activities of producers, traders and persons supplying services including mining and agricultural activities and the activities of the professions, even if such activities have been performed only once but in circumstances indicating an intention to conduct them continually. The term "economic activity" also includes exploitation of tangible or intangible property for the purpose of obtaining income there from on a continuing basis.

Additionally, under certain circumstances persons purchasing services or goods may be considered to be taxpayers.

### **Reverse – Charge**

A reverse – charge mechanism, which is to facilitate VAT collection, generally applies if a supplier of goods or services does not reside in Poland.

However, according to the Polish VAT provisions, in the case of some kinds of services rendered by foreign persons, VAT shall always be levied upon a Polish customer. Among the above mentioned services are in particular:

- transfer and assignment of rights, licences, patents, copyrights, trade marks, and similar rights,
- advertising services,
- the services of lawyers, accountants, engineers, market research services, services of consultants, advisory regarding pursuing business activity and business management, data processing and the supplying of information, researches and technical analyses, services of translators,
- banking, financial, and insurance transactions including reinsurance, with the exception of the hire of safes,
- supply of staff,
- hiring out of movable tangible property, with the exception of

means of transport,

- telecommunication services,
- broadcasting (radio and television) services,
- electronic services,
- an obligation to refrain from provision of the above mentioned services,
- services of agents who act in the name and for the account of another person, if they procure for their principal the services mentioned above.

With regard to other cases and the case of supplies of goods made by foreign persons, the Polish purchaser will be liable to taxation unless the tax had been settled by the foreign seller – the Polish VAT provisions stipulate for entitlement of a foreign seller to register for Polish VAT and, as a result, for the possibility of settlement of Polish VAT.

### **Intra-Community acquisition of goods**

Intra-Community purchase of goods (IAG) means a transfer of the right to dispose of goods as owner, when the goods are brought into Poland from another Member State. Taxation of IAG is based on a reverse-charge rule – tax (output VAT) is calculated and settled by the purchaser. The tax in question may simultaneously be recognized as input VAT subject to deduction from output VAT.

IAG is subject to taxation at the same rates applied to domestic supplies.

### **Intra-Community supply of goods**

Intra-Community supply of goods (ISG) is a transfer of right to dispose of goods as owner when the goods are dispatched from Poland to another Member State. In the normal course of events ISG in Poland is followed by IAG in the Member State to which the goods have been sent.

ISG is subject to a 0% VAT rate. The supplier is entitled to deduct input VAT levied upon purchases associated with ISG.

### **Deduction of input VAT**

The distinctive feature of VAT is neutrality. A taxpayer is therefore entitled to deduct its input VAT, ie. VAT incurred upon purchases, from output VAT resulting from its sales. Surplus of output VAT over input VAT constitutes a tax payable to a tax office. In turn, surplus of input VAT over output VAT, depending on the taxpayers decision, is subject to direct repayment from tax office or decreases in output VAT in the next VAT settlement periods.

The Polish VAT law provides for relatively long time limits for obtaining refunds for surplus of input VAT over output VAT. The basic principle is that the repayment must be made within 60 days of the day of sub-

mitting a tax return. Under certain circumstances the 60-day period may be shortened to 25 days or prolonged to 180.

### **Tax rates**

Polish tax law provides 4 VAT rates. The basic rate is 22%, which is applied to a majority of goods and services. Other rates:

- 7% - applies to a few groups of goods and services, e.g. goods related to health protection, groceries, the services of hotels, and folk art articles,
- 3% - applies to supply of some farm produce; this rate is binding temporarily - until 31 December 2010 .

The rate of special significance is a 0% rate. It is applicable, in particular, to exports and intra-Community supply of goods, international transport services. Taxpayers enjoying the 0% rate are not deprived of the right to deduct input VAT levied upon purchases related to those activities subject to this rate.

Polish tax provisions also provide for some exemptions from VAT. Among the activities subject to such exemptions are financial, educational, health and cultural services. The exemption prevents, however, the service provider from enjoying deduction of input VAT related to the exempt transactions.

### **Taxable amount**

The taxable amount (tax base), along with VAT rate, directly influences the value of output VAT. However, the amount of VAT payable to the tax office corresponds to the surplus of output VAT over input VAT.

The taxable amount is the turnover, which is the amount due from sales reduced by the amount of tax. The taxable amount should include all that constitutes the consideration to be obtained for the supplies made including subsidies directly linked to the price of such supplies.

With respect to importation of goods, the taxable amount constitutes the value of goods determined for customs purposes, increased by due customs duty. If the imported goods are excise ones, the taxable amount is increased by excise tax.

### **Tax liability (chargeability of tax)**

As a rule, tax liability arises at the moment the goods are delivered and services are performed.

The Polish VAT law provides, however, for a number of exceptions to the above rule. Tax liability may therefore arise:

- at the moment of issuing the invoice, but not later than on the 7th day after the date of delivery of the goods or provision of the service, if the transaction was to be confirmed by invoice,
- at the moment of receipt of payment, including a partial one,

before delivery of goods or performing the service,

- at the moment of receipt of the payment, in whole or in part, however not later than upon the lapse of the time limit for payment specified in the contract or invoice - in the case of lease services or transactions of a similar nature.

With regard to ISG and IAG, tax liability arises on the 15<sup>th</sup> day of the month after the month of supply. If, however, an invoice has been issued before this deadline, the tax liability arises at the moment the invoice is issued.

## Place of supply

Provisions defining the place of supply are of great importance with regard to the taxation of international transactions. They directly indicate the country which is entitled to levy VAT on a given transaction. A given Member State may impose VAT only on those transactions, which, according to relevant provisions, are executed on its territory.

In the case of **goods dispatched or transported**, the place of supply is defined as the place in which the goods are located before their dispatch or transportation. Supply of goods which **are not transported** is considered to have been effected at the place where the goods are at the moment of supply. In the case of goods installed or assembled by a supplier or for his account, the place of installation or assembly is considered the place of supply.

Regarding **the place of supply of services**, the rule is that it is the place where the service provider has its seat, place of residence, or permanent place of business activity through which the services are performed. The VAT provisions provide, however, for many exceptions in this respect:

1. services connected with immovable property, including the ones rendered by estate agents and experts, and services for preparing and coordinating construction work, such as the services of architects and of firms providing onsite supervision - the place of supply is the place where the property is situated,
2. transport services (apart from intra-Community transport services) are taxed in the place where the transport services are actually supplied, also with regard to the distances covered,
3. services:
  - cultural, artistic, sporting, scientific, and entertainment services,
  - ancillary transport services such as loading, unloading, handling, and similar activities,
  - valuation of movable tangible property,
  - works on movable tangible property

are subject to taxation in the place where they are physically carried out.

For a number of immaterial services, when performed for customers

established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, the place of supply is indicated as the place where the customer has its seat, residence, or fixed establishment at which the service is supplied. The immaterial services in question are as follows:

1. transfer and assignment of rights, licenses, patents, copyrights, trade marks, and similar rights,
2. advertising services,
3. services of lawyers, accountants, engineers, architects, market research services, services of consultants, advisory regarding pursuing business activity and business management, data processing and the supplying of information, research and technical analyses, the services of translators,
4. banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes,
5. supply of staff,
6. hiring out of movable tangible property, with the exception of means of transport,
7. telecommunication services,
8. broadcasting (radio and television) services,
9. electronic services,
10. an obligation to refrain from provision of the above services,
11. the services of agents who act in the name and for the account of another, if they procure for their principal the services mentioned above.

### **Taxpayers exempt from taxation**

Taxpayers who recorded in the previous tax year a turnover of no more than 50.000 PLN (this limit is valid since 1<sup>st</sup> January 2008) may enjoy a tax exemption. Therefore, despite performing taxable activities within the framework of their business activity, they are not bound to charge VAT upon their sales. Simultaneously, however, they would not be entitled to deduct input VAT.

### **Payment of tax**

As a rule VAT is settled on a monthly basis. From 2009 all taxpayers are able to choose quarterly settlements. Taxpayers with turnover in the previous year lower than 1.200.000 EURO may choose to make quarterly settlements. Other taxpayers – despite choosing quarterly settlements – should pay advance payments for Vat for first and second month of a quarter.

Tax returns must be submitted to the relevant tax office up to the 25th day of the month following the month (quarter) in which the tax liability arose. Up to this date the payment of tax for a given settlement

period shall be made to the account of the tax office.

### **Procedure of VAT refund to foreign entities**

The general rule is that VAT is refundable to foreign entities on their application if said VAT would also be deductible for VAT taxpayers registered in Poland for VAT purposes. It should be underlined that non-EU taxpayers are eligible for a VAT refund subject to the reciprocity rule.

The procedure for VAT refund to foreign entities is set out in the Regulation of the Minister of Finance dated of 23 April 2004 (hereinafter referred to as "the Regulation"). Pursuant to this Regulation, in order to obtain a VAT refund, the following conditions have to be met jointly within the period covered by the application:

- the applicant may not have its place of residence, registered seat, or permanent place of activity in Poland,
- the applicant shall be registered as a VAT (value added tax) or similar taxpayer in the country of its residence, registered seat, or permanent place of activity,
- the applicant shall not be registered as a VAT taxpayer in Poland,
- the applicant shall not perform activities within the territory of Poland which are subject to Polish VAT (apart from those certain activities mentioned in the Regulation, including, among others, transactions settled pursuant to the reverse charge rule).

The application for a VAT refund may pertain to periods no shorter than three months and no longer than one calendar year. The application concerning any given year has to be filed by the 30<sup>th</sup> of June of the next year. The amount of VAT to be refunded may not generally be lower than the equivalent in PLN of 25 Euro. The application has to be prepared in the Polish language. The application should be filed with the Head of the Second Tax Office Warsaw - City along with the following documents:

- originals of VAT invoices and/or customs documents, from which the VAT refund results, and
- the original of a certificate (hereinafter referred to as "the Certificate") confirming that the entity applying for a VAT refund is registered as a VAT taxpayer in the country of residence, registered seat, or permanent place of activity.

The Certificate should be issued by the tax authorities of the country of residence, the registered seat or permanent place of activity of the applicant. The form of the Certificate constitutes an appendix to the Regulation. If local tax authorities use different forms of certificates they are generally accepted as long as these forms contain all of the information required by the Polish form.

According to the Regulation, the VAT should be refunded within six months from the date of filing the application. However the above mentioned term may be extended if the application requires additional verification. In practice the VAT refund may even take 2-4 years.

The amount of VAT refunded is transferred in PLN to the bank account of the applicant. If the VAT is transferred to an account opened in a foreign bank, the Polish tax authorities do not cover the banking charges related to the transfer.