

## Proposed amendments to the VAT Act

On 2<sup>nd</sup> July the Ministry of Finance announced a number of proposed amendments to the VAT Act. The majority of the proposed changes are due to come into force on 1<sup>st</sup> January 2010, whilst others will not come into force until 1<sup>st</sup> January 2011. Currently the proposals are a subject of consultation with organizations representing taxpayers. Below we present a short summary of the most important changes.

### Free of charge transfer of goods

In accordance with the proposed wording of Article 7(2), the free of charge transfer of goods belonging to the taxpayer's enterprise, regardless of whether the transfer is performed for purposes related to the enterprise or not, will be subject to taxation, provided that the taxpayer was entitled to deduct the input VAT calculated on these goods.

The proposed amendment is undoubtedly unfavorable for taxpayers. It must be emphasized that under current regulations, the free of charge transfer of goods performed for purposes related to the business activity of the taxpayer is not subject to taxation. In spite of the unfavorable binding rulings issued by the Ministry of Finance, the correctness of such a standpoint is confirmed by the administrative courts. Therefore, we would like to bring your attention to the fact that before the proposed changes come into force, it is still possible to recover the output VAT paid on the free of charge transfer of goods performed for purposes related to the business activities of the taxpayer. On the basis of current provisions it is very likely that such a possibility will be

confirmed by the administrative court. Should you be interested, we are happy to offer our assistance and experience in recovering the output VAT overpaid on the free of charge transfer of goods.

### Services classification

An amendment to the regulations of the VAT Act and its attachments to the Polish Goods and Services Classification (PKWiU) of 2008 is proposed. The amendment assumes that services should be identified on the basis of statistic classification only when the VAT Act and the executive provisions invoke such symbols for given services. Moreover, due to the change of PKWiU, some VAT provisions referring to this classification (e.g. concerning the tax point and the place of supply) were changed.

### Modification of the regulations regarding the VAT exemption

Attachment No 4 to the VAT Act is to be abolished, while its regulations determining the scope of services that are exempt from VAT is to be moved to the Act. Simultaneously, due to the inclusion of the description of VAT exempt services in the VAT Act, the identification of such services by the use of statistic classification has been abandoned.

The new range of exemptions and terminology are in accordance with the directive. In practice, it may result in changes to the scope of the VAT exemption in comparison to the current rules e.g. in the case of financial services or services related to health care.

### Invoices documenting the transactions being subject to taxation outside Poland

The requirement to issue invoices in order to document transactions for which the place of supply is outside Poland is to be withdrawn. The change results from the fact that invoices documenting transactions taxed outside of Poland should be issued in accordance with the regulations of the country in which the transaction is subject to taxation.

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

## Contact details

### Warsaw Office

ul. Chłodna 51  
00-867 Warszawa  
Tel.: +48 (22) 528 11 65-71  
Fax: +48 (22) 528 11 59  
*tax@kpmg.pl*

**Tomasz Grunwald**  
Partner

**Tomasz Beldyga**  
Director

**Piotr Żurowski**  
Director

### Cracow Office

al. Armii Krajowej 18  
30-150 Kraków  
Tel.: +48 (12) 42 49 400  
Fax: +48 (12) 42 49 411  
*tax.krakow@kpmg.pl*

**Mirosław Michna**  
Partner

### Poznan Office

ul. Roosevelta 18  
60-829 Poznań  
Tel.: +48 (61) 84 54 660  
Fax: +48 (61) 84 54 602  
*tax.poznan@kpmg.pl*

**Andrzej Bernatek**  
Partner

**Renata Pięta-Mintus**  
Director

### Wrocław Office

ul. Bema 2  
50-265 Wrocław  
Tel.: +48 (71) 370 49 00  
Fax: +48 (71) 370 49 01  
*tax.wroclaw@kpmg.pl*

**Sylwester Grochowina**  
Partner

### Gdansk Office

ul. Piwna 28-31  
80-831 Gdańsk  
Tel.: +48 (58) 321 96 00  
Fax: +48 (58) 321 96 01  
*tax.gdansk@kpmg.pl*

**Aleksander Dąbrowski**  
Senior Manager

### Katowice Office

ul. Powstańców 43  
40-024 Katowice  
Tel.: +48 (32) 200 65 05  
Fax: +48 (32) 200 65 10  
*tax.katowice@kpmg.pl*

**Paweł Barański**  
Director

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