

Tax Newsletter

Tax Code: Key provisions related to Value Added Tax

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Tax Code

Following the adoption of the Tax Code by the Ukrainian Parliament in December 2010, this Newsletter summarizes key changes related to Value Added Tax (VAT).

- *Tax rate*

Starting from 1 January 2014 the VAT rate will be reduced from 20% to 17%. Until that date the VAT rate will remain at 20%.

- *Voluntary registration*

An entity may apply for voluntary VAT registration only after it performs VAT able transactions with VAT-registered customers.

Such limitations for voluntary registration will have a negative impact on business during the start-up stage of operations, when substantial investment in fixed assets and goods in stock is required.

- *Exempt services*

The list of services not subject to VAT has been expanded to include consulting, engineering, accounting, legal, audit, actuarial and other similar services of a consulting nature, as well as services on development, supplying and testing of software, data processing and consulting on informational services, including services assisted by computer systems. Such services will not be subject to VAT irrespective of whether they are provided to/by a resident or a non-resident, therefore no input VAT will be available.

All entities subject to this provision will need to recognize VAT liabilities in respect of assets to be used in non-VAT able transactions if VAT credit has been previously recognized.

- *Exempt sales*

Supply of grain crops and industrial crops will be exempted from VAT, with the exception of their first supply, until 1 January 2014. 0% VAT rate will be applicable only to the export of grain crops stated in the Customs tariff under position 1001-1008 and industrial crops under position 1205-1206 until 1 July 2011.

Highlights

- *VAT rate to be reduced to 17% in 2014*
- *Restrictions on voluntary registration*
- *VAT exemption on all consulting and other services*
- *VAT exemption on sale of grain crops until 2014*
- *Partial exemption on temporary import is now available*
- *VAT on reorganization is clear*
- *Compulsory registration of VAT invoices*
- *Import VAT on leasing is now available as input VAT*
- *Automatic VAT refund for exporters*

- *Partial exemption*

Partial VAT exemption is available for goods imported temporarily for use in production or performance of works/services. Partial exemption requires monthly payment of 3% of the total amount of VAT due under the general import regime. The VAT paid should be included in the tax credit. Upon expiration of the 3-year period, the customs authorities should extend temporary import without payment of additional VAT.

If the goods temporarily imported are cleared into free circulation within the initial 3-year period, VAT is payable in full less the amounts already paid under the partial exemption procedure plus late payment interest (120% of the prime rate of the National Bank of Ukraine).

- *Reorganization*

VAT consequences on the reorganization of legal entities (i.e. merger, accession, spin-off, division and change of legal form) are clearly regulated. In particular, there is a direct provision that such transactions are not subject to VAT. No adjustment of VAT input is required.

In case of reorganization, the entity should register as a new taxpayer (except the entity formed by change of legal form) and will be subject to the various restrictions in respect of VAT refund.

• *VAT invoices*

A period of validity of VAT invoices is introduced. The VAT invoice should be included into VAT input only within 365 calendar days from the date of its issuance. After this period no credit is available.

• *VAT register*

Invoices exceeding UAH 10 thousand should be registered in a Unified register of VAT invoices. If the supplier does not register the VAT invoice in the Unified register of VAT invoices, the customer is not entitled for input VAT until it submits a claim to the tax authorities. Such a claim should be supported with the primary documents confirming the payment or receipt of goods (services).

• *Input VAT on leasing*

VAT paid during customs clearance of non-current assets imported based on the operating and financial lease agreements may be included into VAT input of the taxpayers.

• *Pro-rata methodology*

Methodology for pro-ration of input VAT in respect of goods/services used simultaneously in VAT able and non-VAT able supplies is established.

Under this methodology, the amount of VAT input eligible for credit during the reporting period should be determined based on the volume of taxable transactions in the overall volume of transactions of the previous calendar year. Such a ratio should apply within the full current calendar year. At the end of the current calendar year a taxpayer should recalculate eligible VAT input based on the volume of transactions of the current calendar year. In respect of fixed assets, such recalculation should be done annually for the first three years after the start of an asset's usage.

• *VAT refunds*

An automatic VAT refund procedure has been introduced in respect of eligible taxpayers (i.e. exporters). Within this procedure, VAT should be refunded to the taxpayer within a maximum of 26 days from the VAT return submitting deadline. The Code establishes strict criteria which should be met by the taxpayer in order to qualify for an automatic VAT refund.

Government liability of 120% of the NBU rate is applied to the amount of overdue VAT refund.

• *Penalties*

The penalties in respect of understated VAT liabilities or overstated VAT refund/VAT receivable are set at the level of:

- 25% in case of first offence;
- 50% in case of second offence within 1095 days;
- 75% in case of the third and any subsequent offence within 1095 days.

Should you have any questions or comments in connection with the Tax Code, do not hesitate to contact us:

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