

Tax & Legal Alert

Poland • July 2007

Indirect Taxes

Dear Readers,
Please find below July edition of the newsletter published by the Indirect Taxes team in PwC Tax Department.
If you are interested in any information presented below, please contact our specialists.

With kind regards,

Hubert Jądrzyk



What's new: Indirect Taxes

Contacts:

Hubert Jądrzyk
Partner
E-mail: hubert.jadrzyk@pl.pwc.com
Tel: +48 22 523 4837

PricewaterhouseCoopers
Al. Armii Ludowej 14, Warszawa
Tel: +48 22 523 4901

Ul. Św. Mikołaja 7, Wrocław
Tel: +48 71 356 1170

Ul. Lubicz 23, Kraków
Tel: + 48 12 629 6060

Plac Andresa 5, Poznań
Tel: +48 61 8505 100

Ul. Sowińskiego 46, Katowice
Tel: +48 32 604 0200

Ul. Piwna 36 / 39
Tel. +48 58 301 28 73

www.pwc.com/pl
www.taxonline.pl

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Interpretations of the tax law as of 1 July

As of 1 July 2007, new regulations of the Tax Code came into effect regarding interpretations of the tax law. The main changes include:

- Interpretations will be issued by the Minister of Finance, and not by heads of tax offices. The Minister has authorised four directors of tax chambers to perform this task: in Bydgoszcz, Katowice, Poznań, and Warsaw;
- Applications for interpretations should be filed on an ORD-IN form, and are subject to a fee of PLN 75;
- An application can be filed by anybody interested party (previously, only registered taxpayers were entitled to file applications);
- An application can relate to a future situation;
- Full protection resulting from compliance with an interpretation is now limited to situations which arise after the taxpayer has received the interpretation.

Cash registers – a new decree

On 25 June 2007, the Ministry of Finance issued a new decree on cash registers. Primarily this decree extends to 31 December 2007 the possibility of enjoying an exemption from the obligation to register sales to individuals performed as part of the activities listed in an appendix to the decree. The decree also stipulates a deadline 30 September 2007, for applying an exemption from recording sales relating to activities listed in an appendix to the previous decree and which are no longer listed in the appendix to the current decree. These include advertising services, except those related to the organisation of commercial advertising and commercial and service information, and scientific and research services. Similar to the previous decree, entities exempt from the obligation are:

- Taxpayers whose sales to individuals under the activities listed in items 1-39 of the appendix have not exceeded PLN 40,000 in the previous tax year and who were not obliged to record the sales earlier;
- Taxpayers who began selling in 2007, but the exemption ceases to apply once the sales exceed PLN 20,000;
- Certain taxpayers who make settlements in the form of a tax card;

- Taxpayers who perform sales under the activities listed in items 1-33 of the appendix to the decree, if in the prior year, the share of such sales in total sales exceeded 70%;
- Taxpayers who begin to make sales listed in items 1-33 of the appendix in 2007, if the anticipated share of such sales in total sales exceeds 70%.

Despite those exemptions, the obligation to register sales applies, among others, to taxi drivers, persons supplying radio & television equipment and those supplying information carriers (recorded CDs, etc.).

Another Polish case before the European Court of Justice

In late May 2007, the Voivodeship's Administrative Court in Kraków applied to the ECJ for a preliminary ruling regarding of the possibility of limiting the right to deduct VAT on fuel. According to the applicable VAT regulations, a reduction of the tax or refund of the tax difference does not apply to engine fuels, diesel oils and gas used for passenger cars and other vehicles with an admissible total weight not exceeding 3.5 tons.

Based on the judgments of the ECJ, the Polish regulations are inconsistent with the EU legislation and taxpayers would be able to recover the input tax assessed on the purchase of fuel.



Invoices to correct e-invoices

On 21 May 2007, the Director of the Tax Chamber in Rzeszów issued an interpretation regarding issuing a "hardcopy" correcting invoice for an original invoice which was issued electronically.

Pursuant to par. 5, clause 2 of the decree on issuing and sending invoices in an electronic format, a taxpayer is entitled to issue correcting invoices in a hardcopy format when there are (technical or formal) obstacles as a result of which issuing or sending an electronic correcting invoice is impossible.

Most tax offices believed that the inability of the taxpayer's IT system to generate an e-message responsible for a correcting invoice is not an obstacle within the meaning of the aforesaid par. 5, clause 2 of the decree.

However the Director of the Tax Chamber in Rzeszów waived a similar resolution of the Head of the tax office and presented his own interpretation. According to the interpretation, "formal and technical obstacles" comprise both a breakdown of the system, withdrawal of an authorisation for electronic data exchange by the counterparty, as well as system-related limitations which make it impossible to send correcting e-invoices.

Draft new Act on excise duty

The Ministry of Finance has prepared a draft of a new Act on excise duty which harmonises the Polish excise duty regulations with the European legislation and implements new solutions based on experience gained hitherto. The said draft dated 25 May 2007 was transferred for inter-departmental discussions.

The new draft is to supersede the Act which has been in force since 2004, and harmonise the Polish legislation with the Community regulations, in particular with the Council Directives: 2003/96/EC and 2004/74/EC. The most important changes include:

- Resigning from taxation with customs duty of non-harmonised goods, except passenger cars, and consequently a change in the definition of excise goods (according to the draft, excise goods will include electric power, alcoholic beverages, tobacco products, passenger cars and energy products – in accordance with Directive 2003/96/EC, this category comprises engine fuels, heating oils and gas);
- Resigning from the double classification of excise goods – in accordance with PKWiU (Polska Klasyfikacja Wyrobów i Usług – Polish Classification of Product and Services) and CN (Combined Nomenclature). The PKWiU classification is now used in domestic trade, and CN codes – in trade with the Community Member States and in import and export; the draft Act provides for the use of the CN classification for all types of trade;
- Introducing new rules for taxation with excise duty of electric power by determining the moment of the tax obligation arising as the moment at which electric power is released to the end recipient, and consequently, introducing a new range of categories of taxpayers;
- Incorporating in the draft Act mandatory exemptions from excise duty which result from the Community legislation;
- Clear separation of the excise duty suspension procedure from the excise duty exemption system;
- The procedure for suspending the collection of excise duty will be based on the assumption that the tax obligation and the tax liability arise at different moments;
- Defining situations in which the obligation to manufacture excise duty goods in a tax warehouse will be lifted;
- Implementing the provisions of Council Directive 2003/96/EC in respect of the obligation to levy excise duty on coal and coke, with parallel exemption of such products from excise duty as of 1 January 2012, as well as on natural gas - with a parallel exemption from excise duty as of 1 January 2014;
- Increases of excise duty on tobacco products: in 2008 excise duty on cigarettes will go up by 23.3 %, on tobacco intended for rolling cigarettes manually by 9.4 % and on smoking tobacco by 38 %. In 2009, the increases will amount to 26.2 % for cigarettes, 26 % for tobacco intended for rolling cigarettes manually and 28 % for other smoking tobaccos.

According to the Ministry of Finance, the new Act is to come into effect on 1 January 2008.

Reduction of the minimum excise duty rate on cigarettes

The Ministry of Finance transferred a draft decree on the minimum excise duty rate on cigarettes for inter-departmental discussions.

In the said draft, the Minister of Finance proposed a reduction of the minimum excise duty rate for cigarettes to PLN 146.33 per 1000 cigarettes. Currently, the rate is PLN 150 per 1000 cigarettes. The draft decree was prepared on the basis of the statutory authorisation resulting from Art. 73(5) of the Act of 23 January 2004 on excise duty. On this basis, the Minister of Finance can determine a minimum rate for excise duty on cigarettes which must be paid. This constitutes 90 % of the total amount of excise duty charged on the price equal to the most popular price category. It is the price category for which there was the highest demand in the prior calendar year and which accounted for the highest sales. The most popular price category is determined as at 1 January of a given year according to the number of cigarettes sold, based on the maximum retail prices (printed on packages) in terms of an equivalent of 1000 cigarettes.

Amendment to the Excise Duty Act which reduces excise duty on biofuels has been signed

The President of the Republic of Poland signed an amendment to the Excise Duty Act passed by the Sejm on 27 April 2007.

The said amendment, which we presented to you in detail in the previous issue of our Bulletin, provides for excise duty rates which will be more favourable to manufacturers of biofuels than the present ones. However, the Act stipulates that the new excise duty rates will only become applicable once a positive opinion thereon is issued by the European Commission. Therefore, it should be assumed that the implementation of the new rates for biofuels manufacturers is relatively uncertain, since the European Commission could state that it is a type of state aid which is unacceptable in the European Union.

The amendment will come into effect 30 days after being published.



Contact us

We trust that this summary of the most important changes will make your business decisions easier. If you have any further queries relating to any of the items referred to in this publication, please do not hesitate to contact:

Warsaw Office:

Hubert Jądrzyk
Partner
Tel.: + 48 (22) 523 4817
Fax: +48 (22) 508 4817
e-mail: hubert.jadrzyk@pl.pwc.com

Mariusz Marecki
Director
Tel.: + 48 (22) 523 4787
Fax: +48 (22) 508 4787
email:
mariusz.marecki@pl.pwc.com

VAT and excise tax:

Marcin Chomiuk
VAT Senior Manager
Tel.: +48 (22) 523 4760
Fax: +48 (22) 508 4760
e-mail: marcin.chomiuk@pl.pwc.com

Tomasz Kassel
VAT & Excise Senior Manager
Tel.: +48 (22) 523 4846
Fax: +48 (22) 508 4846
e-mail: tomasz.kassel@pl.pwc.com

Wojciech Śliz
VAT Senior Manager
Tel.: +48 (22) 523 4992
Fax: +48 (22) 508 4992
e-mail: wojciech.sliz@pl.pwc.com

Customs and international trade, Indirect taxes litigation:

Tomasz Rudyk
Senior Manager
Tel.: +48 (22) 523 4858
Fax: +48 (22) 508 4858
e-mail: tomasz.rudyk@pl.pwc.com

Wroclaw Office:

Filip Kopacz
Manager
Tel.: +48 (71) 356 1154
Fax: +48 (71) 356 1188
e-mail:
filip.kopacz@pl.pwc.com

Poznań Office:

Juliusz Wojciechowski
Manager
Tel. +48 (061) 850 51 54
Fax: +48 (061) 850 51 59
e-mail: juliusz.wojciechowski@pl.pwc.com

Cracow Office:

Anna Szczepankiewicz
Manager
Tel.: +48 (12) 429 6100 ext. 212
Fax: +48 (12) 429 6563
e-mail: anna.szczepankiewicz@pl.pwc.com

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