

AMENDMENTS TO THE VALUE ADDED TAX ACT

in force as of 1 January 2009

In the State Gazette issue 106 dated 12 December 2008 the Amendments and Supplementations Act to the Value Added Tax Act (ASAVATA) was promulgated. We will try herein to present the most important changes of the legal provisions without enumerating them exhaustively. Some of the amendments and supplementations aim to clarify the application and to make more precise the existing provisions while others change substantively the existing tax regime.

1. Right to deduction of input VAT in cases when the tax is due by the receiver/importer

One of the most important amendments of VATA is related to the deduction of input VAT in the cases of reverse charge of VAT.

According to the provisions in force till 31 December 2008 in case of receiving a supply for which the tax is due by the receiver, the latter should charge VAT but not always had the possibility to deduct the so charged VAT as input VAT. Based on provisions in force so far, the practice established by the revenue administration was to charge VAT with the tax assessment act but not to allow its deduction as input VAT in cases when during the tax audit it is established that the tax liable person did not charge VAT under art. 82-86 VATA or had charged it after the established deadlines, and the 3 month period under art. 72, para 1 VATA had elapsed.

The purpose of the new art. 73a is this practice to be changed and to be made compliant with the decisions of the European Court of Justice. According to the quoted provision the right to deduction of input VAT would also arise in case:

- The supplier has not issued a tax document (invoice), which meets the requirements of art. 114 VATA;
- The receiver does not have a protocol under art. 117 VATA, a customs declaration or another document evidencing the charging of tax;
- The VAT charged has become due more than 3 tax periods ago (the requirement of art.72 VATA),

but under the condition that the transaction was not concealed and data about it is available in the books of the receiver. The related procedure is provided for in the law.

In this connection is also § 18 of the Final and Transitional Provisions of ASAVATA, which regulates the cases open as at the date of enactment of ASAVATA, including the cases of initiated and finalized tax audits. This provision gives right to the persons, which have not charged VAT as receivers under supplies (nevertheless that they had this obligation) and/or have not deducted input VAT, to charge VAT and to deduct input VAT accordingly within 4 months of entering into force of ASAVATA, i.e. till 30 April 2009. The retrospective effect of the new art. 73a VATA is necessary because of the many omissions in charging VAT in cases when the liability for charging VAT is of the receiver in the first periods of the implementation of VATA (in force as of 1 January 2007), as well as of the necessity to ensure equal treatment of all persons.

Simultaneously, a separate administrative-penal provision is created as well regulating the cases of charging VAT after the prescribed 15-days term when the tax is due by the receiver under the supply (the new art. 180a VATA). According to it, the fine/penalty due would be at a considerably lower amount if the receiver has right to full deduction of input VAT with regard to reverse charged VAT.

2. Requisites of tax documents. Issuance of electronic documents.

The signature of the person that created the document shall no longer be a compulsory requisite to the tax invoices and the debit/credit notes. In this connection is also the amendment of art. 7 of the Accountancy Act by means of §19 of the Final and Transitional Provisions of ASAVATA.

The rules for issuance of invoices by electronic means have been amended as well.

3. Tax treatment of barter transactions

According to the new wording of art. 130 VATA the taxable event of the two counter supplies upon a barter transaction will occur under the general rules of VATA, i.e. each of the supplies will have a separate date of the taxable event. The supply with earlier date would be treated as an advance payment under the second-in-time supply.

4. Exemption from VAT of import of goods in the personal luggage of passengers

With the amendments and supplementations made in art. 58 VATA, which regulates the cases of exemption from VAT of import of goods, the exemption of goods imported in the personal luggage of the passengers has been arranged in more details. In that relation, amendments in the Regulations on the Application of VATA were made and published in the State Gazette issue 105 of 9 December 2008.

This amendment enters into force as of 1 December 2008.

5. Intra community supplies (ICS) and intra community acquisitions (ICA)

The supplementation made in art. 6, para 3 VATA (a new i. 3 has been created) has the purpose to include expressly in the scope of the supplies of goods for consideration the cases in which a tax liable person (including when it is not registered under VATA) sends goods for the purposes of its economic activities in another member-state. Correspondingly, the amended wording of art. 13, para 3 VATA equates to ICA the cases, in which a taxable person receives in Bulgaria goods dispatched or transported by it for the purposes of its economic activities from another member state. The amendments aim to remove loopholes in the previous regulations that resulted in the lack of obligation for registration in such cases.

Express tax treatment is introduced also of the cases in which a good has been initially imported on the territory of EU into another member-state in which the person is not registered for VAT purposes.

6. Taxation of supplies related to real estates

The tax treatment of supplies of services related to real estates situated in Bulgaria, performed by foreign persons has been considerably changed. The obligation to charge VAT under these supplies is transferred from the supplier to the receiver under the supply, i.e. the reverse charge mechanism shall apply from now on. As a result, these supplies will not be included in the turnover for the compulsory VAT registration of the foreign person and respectively, the necessity of such registration is eliminated.

An obligation to charge VAT is introduced also for the receivers under supplies of services related to real estates, which are taxable persons but are not registered under VATA.

7. Obligation to pay VAT

By virtue of amendment of art. 85 VATA a specification is made in the rule that each person that has stated VAT in a tax document is liable to pay it even if the tax is not due or has been wrongly charged, or charged on no grounds. The amendment narrows the scope of the documents for which this rule shall apply by - VAT so charged would be due only if it is stated in an invoice or debit note, i.e. in a document giving right of the person receiving it to deduct input VAT.

8. Other amendments and supplementations

It is specified that the received advance payment includes also the amount of VAT due.
Right to deduction of input VAT is allowed in the case of ICA of investment gold.

The amendments in VATA enter into force as of 1 January 2009, with the exception of the amendments commented in s. 4 herein above related to the exemption from VAT of the import of goods in the personal luggage of passengers, which entered into force as of 1 December 2008.

The information herein has the purpose only to highlight some issues related to the application of the new taxation regime introduced by ASAVATA and is not exhaustive. Should questions arise on the application of the new provisions, please do not hesitate to contact us on phone No. 02/94337 00, fax 02/943 37 07, e-mail office@afa.bg or at our mail address 38 Oborishte Str., Sofia 1504.