

# AMENDMENTS TO THE VALUE ADDED TAX ACT

in force as of 1 January 2010

In the State Gazette issue 95 dated 1 December 2009 the Amendments and Supplementations Act to the Value Added Tax Act (ASAVATA) was promulgated. Herein below we have tried to present the most important changes without being exhaustive. Some of the amendments and supplementations aim to harmonize the Bulgarian tax legislation in the field of indirect taxes with the requirements of the European VAT Directives and decisions of the European Court of Justice, while others aim to make the existing provisions more precise. The new provisions enter into force as of 1 January 2010 and could be summarized as follows:

## 1. Place of supply of services

### 1.1. General rule

One of the essential amendments in VATA is related to the change of the rules for place of supply of services, regulated under Art. 21 VATA. In the general case the services shall have their place of supply in the member state where the customer/consumer of the services is established, given that this customer is a **taxable person**. Until present in the general case the place of supply of services was the place where the supplier has established its economic activity.

For services provided to **non-taxable persons** (in most cases individuals), the existing general rule continues to be applied i.e., the place of supply of services shall be the country where the supplier is established.

The amendments are based on the changes in Council Directive 2006/112/EC, which shall be adopted in the national legislation of each EU member state not later than 1 January 2010. The changes originate from the idea that the taxation and the administration of the services in the general case shall not be separated from the place of their actual consumption.

The amendments introduced will facilitate the trade with services between persons established in different member states and will relieve the suppliers from the administrative burden of charging VAT on cross border supplies of services.

With respect to the application of the rules for place of supply of services and the reverse charge obligation resulting thereto (charging VAT from the consumer), an amendment in the definitions for taxable persons is introduced. According to the newly created para 6 of Art. 3 under VATA, for the purpose of defining the place of supply of services and determining the person liable for tax, **taxable persons** who carry out both taxable and exempt transactions/transactions outside the scope of their independent economic activity (i.e. activities not charged with VAT), **shall be treated as taxable persons for all the services received** (irrespective of whether the services received are intended for

the needs of their taxable, exempted or non-taxable transactions). Similarly, non-taxable legal entities registered under VATA, shall be treated as taxable persons for transactions of services received.

## 1.2. Exceptions from the general rule for the place of supply of services

When certain conditions are met and certain type of services are provided, the general rule for the place of supply of services shall not be applied. The exceptions of the general rule are related to:

- Specific services, for which there were specific rules for place of supply till present, remain unchanged in their major part. In particular, the rules for place of the following transactions remain unchanged (for transactions between two taxable persons):
  - Services related to immovable property – the place of supply is the place where the immovable property is located;
  - Transportation services – the place of supply is determined proportionately to the distances covered;
  - Sports, cultural, entertaining and educational services – the place of supply of services is the place where the services are physically performed;
- Short-term hire of means of transport, which is defined for the first time. The place of supply of this type of services shall be the place where the means of transport means are provided at the disposal of the consumer. “Short-term hire” shall be understood as the continuous possession or use of the means of transport for through out a period of no more than 30 days and in the case of for vessels not more than 90 days. When the hire exceeds these terms the place of supply of the service shall be determined under the general rule (see section 1.1 above).

It shall be taken into consideration that when the customer of the services is a **non-taxable person** different rules for place of supply shall apply for great number of specific services.

## 2. Transitional regime for the advance payments received for services until 31 December 2009, in case of change the place of supply of services 1 January 2010.

Transitional rules are introduced for cases where advance payment for a service is received before 31 December 2009 while the place of supply of the service is changed after this date. In this case, when the tax event occurs, a tax document shall be issued for the total value of the respective transaction (including the advance payment, if any) and the rule for the place of supply as at the date of the tax event shall be applied. This transitional rule shall be applied both to the supplier and the consumer of the respective transaction.

### **3. Compulsory VAT registration taxable persons supplying and/or receiving services subject to reverse charge VAT**

This requirement is introduced in the newly adopted Art. 97a under VATA and corresponds to the requirements of Directive 2006/112/EC. The said persons shall submit an application for VAT registration no later than 7 days **before** the date of chargeability of tax (i.e. the earlier of advance payment or tax event). This compulsory VAT registration under Art. 97a VATA concerns persons established on the territory of Bulgaria, which are to supply/receive services subject of reverse charge VAT but are not registered for VAT on other grounds (including newly incorporated companies).

When persons registered on this ground meet the requirements for compulsory registration on other ground, then these persons shall separately register under these other grounds as well.

### **4. Extended time limits for deduction of input VAT**

An important change is made in the provision of Art. 72 of the VATA. Deduction of input VAT will be possible, within twelve tax periods (months), after the end of the tax period during which the tax was chargeable. Until present this deadline was three tax periods after the end of the tax period during which the tax was chargeable. The change is provoked by a number of judgments of the European Court of Justice and aims to relieve the limits and complications in respect of deduction of input VAT.

This amendment definitely will have a positive influence on solving practical problems derived from delay in receiving of purchase invoices. The new rule will be applied for transactions, for which the tax was chargeable after 1 January 2009.

### **5. VAT registration of foreign persons**

Foreign persons established in another EU Member State or third countries, with which Bulgaria has legal instruments for mutual assistance with, will be able to register without assigning a fiscal representative.

For the rest of the foreign persons the revenue authorities have the right to decide whether or not to allow their VAT registration without a fiscal representative. This is valid both for cases where the foreign person is applying for VAT registration and for cases where the revenue authorities initiate this registration.

### **6. The time limits for carry forward and effective refund of VAT reclaimable are decreased**

The procedure for carrying forward VAT reclaimable (for tax periods after 1 January 2010) under Art. 92, para 1, i. 2 VATA, will be 2 months instead of 3 months (as it is now). In case of leftover after the completion of the carry forward procedure, the revenue authorities shall effectively refund the amount in 30 days instead of 45 days, after submitting VAT return. In case a tax audit is assigned the effective refund is extended till the deadline for issuance of the respective tax assessment act.

## **7. Tax base of barter transactions**

The change in Art. 26, para 7 of VATA defines that in case of barter transactions the taxable base shall be the market price of goods/services received as a compensation for the supply. This market price shall be calculated as at the date of chargeability of tax. Until present, the taxable base for barter transactions was the market price of the goods/services supplied.

## **8. Supply of goods and fuel for aviation operators**

Zero rate VAT is introduced for supplies of goods aimed for provisioning and fuelling of aircraft used by the aviation operators flying chiefly on international routes.

Until present zero rate VAT was applied only if the concrete flight, for which the goods/fuel are supplied for, is international.

Zero rate VAT will not be applied if the above transactions are related to private, pleasure and/or sports flights.

## **9. Amendments related to fiscal devices (cash register devices)**

In relation to the fight against the grey economy in Art. 118 under VATA, the persons obliged to use fiscal devices shall ensure remote connection of these devices with the National Revenue Agency and shall report their sales to the revenue authorities on a daily basis. For this purpose companies shall upgrade technically their cash register devices.

Within 6 months period of entering into force of the present amendments (i.e. until July 2010) the Minister of Finance shall adjust the Regulation for registering and reporting the sales in commercial sites with fiscal devices to the present change. Also the Minister shall determine time limit (between six months and two years), in which the persons shall adjust their activity to the new Regulation.

## **10. Obligation for providing electronic address for correspondence with the NRA**

The VAT registered persons shall provide an electronic address for correspondence with the NRA (if the later has not been provided yet). Such an address can be submitted before Register Agency or NRA.

Persons who are VAT registered as at 1 January 2010 have a deadline for providing such an address until 31 March 2010. Persons who will register for VAT after 1 January 2010 shall provide such an address as at the date of submitting the application for VAT registration. Changes in the electronic address for correspondence with the NRA shall be declared within 7 days.

There are no penalties for missing the above deadlines, but the NRA has the right to terminate or refuse VAT registration of the respective person in case he misses these deadlines.

## 11. Other amendments and supplementations in VATA

Other important changes for the business are:

- In case of taxable transactions with continuous performance, for which no payment is due for more than one calendar year, VAT shall be charged at the end of each calendar year;
- The first name and the family name of the individual preparing the invoice will not be a compulsory requisite any more;
- When counting the number of seats in the passenger cars (with up to 5 seats, without driver's seat) only the number of seats assembled by the producer shall be taken into account. There are no changes for cars registered as cargo vehicles.

*The information in this material has as purpose only to note certain issues related to applying the new taxation regime introduced with ASAVATA and is not exhaustive. Should any questions on the application of the said provisions arise, please do not hesitate to contact us at tel.: 02/943 37 00, fax: 02/943 37 07, e-mail: [office@afa.bg](mailto:office@afa.bg) or at 38, Oborishte Str., Sofia 1504.*