

C omments on the amendments to the Value Added Tax Act, effective from 1 January 2005

A Law on Amendment and Supplementation of the Value Added Tax Act (LASVATA) has been published in the State Gazette, issue 108 dated 10 December 2004, which enters into force from **1 January 2005**. The most significant amendments and supplementations, as adopted with LASVATA, relate to:

1. Tax implications upon transfer of ownership or limited property rights on goods or services as a result of a company transformation, transfer of an enterprise as a going concern under Art. 15 of the Commercial Act and making of in-kind contributions to commercial companies

As from 1 January 2005 para 2 of Art. 6 of VATA has been repealed. This provision has been in force since 1 January 2004 and has treated as a non-supply the transfer of an enterprise as a going concern under Art. 15 of the Commercial Act. The latter has been supplemented and separated in the newly adopted Art. 6a of VATA, according to which **no supply occurs upon transfer of ownership or of limited property rights on goods or services** as a result of transformation of a company under chapter sixteen of the Commercial Act; transfer of an enterprise as a going concern under Art. 15 of the Commercial Act; making of an in-kind contribution to the capital of a company.

In respect of the three non-supply hypotheses under Art. 6a VATA it is envisaged that the **recipient of goods and services** becomes a successor of all rights and obligations under VATA related to the goods and services, including the rights under Art. 68 and 70, as well as the obligations under Art. 81 and 82 for making an adjustment of the input VAT deducted.

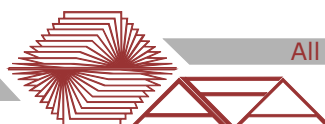
2. Refund of declared VAT for refund - amendments in the procedure under Art. 77, para 1 of VATA.

As from 1 January 2005 Art. 77, para 1, i. 4 of VATA has been supplemented. By the supplementation made to Art. 77, para 1, i. 4 of VATA the registered persons, for whom the procedure on deduction of the declared VAT for refund has been completed and there is still a remaining balance thereon, are provided with an option to choose whether this remaining balance **be refunded within 45-day period, or be deducted from the tax due for payment as reported in the VAT returns filed in the next up to nine consecutive one-month tax periods**. In order to apply this provision the person shall declare this circumstance before the tax authorities at the place of registration under VATA.

The time period for refund of the declared VAT for refund by registered persons performing **export** under the meaning of Art. 14 of VATA **and supplies under art. 92 of VATA** totaling to more than 30% of the total value of all supplies performed by the persons, **has been shortened from 45 days to 30 days**.

3. Amendments concerning the registration and de-registration procedures under VATA

It is a general rule that a person having taxable turnover exceeding BGN 50 thousand for a period not longer than 12 consecutive months before the current one, is subject to registration. This provision creates obligations not only to the local but also to the foreign



persons carrying out taxable supplies on the territory of the country even if they do not have a permanent establishment in Bulgaria. By virtue of the newly adopted para 6 to Art. 108 of VATA the foreign persons having realized a taxable turnover exceeding the threshold for mandatory registration under VATA **are provided with the opportunity not to register** under this law should certain conditions are fulfilled simultaneously.

In effect from 1 January 2005 **in cases of transformation through a change in the legal form, the newly established person is subject to mandatory registration under VAT.**

According to the newly adopted Art. 124b of the law a possibility is provided for **a voluntary registration of a person who has acquired by inheritance, will or through a sale of the inherited property or of the company by the heirs, a company of a deceased person** - sole trader, who has been registered as at the date of his/her death. The right of registration may be exercised within 14 days after the entering into the commercial register of the company's acquisition but not later than 6 months of the inheritance opening.

4. Amendments related to the deregistration under VATA

In accordance with the new i. 4 of Art. 117, para 1 of VATA, when a registered person (if he/she is an individual) **passes away** or is **deleted from the commercial register** (if it is a sole trader or a legal person), there are grounds for **mandatory deregistration** from the date following the date of death of the individual or respectively the date on which the person has been deleted from the commercial register.

Obligation for deregistration according to Art. 117, para 2, i. 6 of VATA will occur also in the cases when a natural or a legal person or a company equalized to a legal person **shall terminate the performance of their independent economic activity.**

By means of the amendment of i. 1 of Art. 119, para 6 the preference for VAT registered persons being not traders **but leasing immovable property to not charge VAT** upon the termination of the VAT registration on the market price of the property has been repealed.

5. Amendments in the administrative and penal provisions

Certain changes are being made in the administrative and penal provisions as well in the part for imposing penalties and property sanctions to persons being obliged to but not filing an application for registration or deregistration under VATA.

In Art.132, para 1 of VATA the date has been specified from which **a sanction equal to the double amount of the charged tax** for the taxable supplies performed by the person for the period from the expiration of the deadline for registration to the date of registration or the date on which the grounds for the registration have been suspended will be imposed on the persons failing to fulfill their obligations for VAT registration. For this period the persons owe also a value added tax, which they had not charged since they did not perform their obligation to register under VATA (Art. 132, para 2 VATA).

The comments set out above represent an overview of the amendments and supplementations of VATL in effect as from 1 January 2005. Should issues arise or if you would like to discuss in further details some problems you have faced in the course of conducting your business, please do not hesitate to contact us at tel. 943 37 00, fax 943 37 07, e-mail office@afa.bg, or postal address at 38, Oborishte St. Sofia 1504.

