

Comments on the Amendments and Supplementations to the Value Added Tax Act, effective after 1 January 2006

In SG, issue 100 of 2005 a Law on Amendments and Supplementations to VATA (LASVATA) was published. The most important amendments could be summarized as follows:

1. Expenses on repairs and improvements

The hitherto prevailing practice of the tax administration, was to treat the significant repairs and improvements of rented assets as supply of a free-of-charge service provided by the lessee to the lessor even that was not explicitly regulated under any text of the law. Currently, the treatment of the significant repairs and improvements of rented assets is explicitly regulated. The supplementations made are as follows:

- A new art. 6b has been created through which the following cases are **excluded from the scope of supplies**:
 - the cases of free-of-charge services rendered by a lessee/user for the **repair** of a leased or granted for use asset when the asset has been leased or granted for use for an uninterrupted period of at least 3 years;
 - the making of improvements by a concessionaire on an asset granted for use when this is a condition or an obligation under the concession agreement.
- A new s. 10 has been created in art. 10, whereby the scope of the cases equal to supply of service shall also include the services rendered with regard to repairs or improvements of an asset by a lessee/user.
- Two new subparagraphs (s. 26 and s. 27) have been added to art. 20 defining the terms “repair” and “improvement”.
- A new s.8 of art. 26 has been created whereby a specific rule for determining the date of the taxable event is introduced. This moment has been changed to be the termination date of the rental agreement and the actual handing back of the asset with the repairs and/or improvements made.
- In the same time, the supplementation of art. 64 (a new s. 6 has been added) confirms the right to deduction of input VAT by the lessee/user for goods and services used in making the repairs/improvements.

The included express transitional provisions concerning the application of the new provisions on repairs and improvements can be regarded as an advantage of the present LASVATA. §16 of the Transitional and Conclusive Provisions LASVATA imposes the effect of the new provisions also to the already existing cases, i.e. expenses made on repairs under rental agreements, which are in force as at 1 January 2006.

2. Supplies related to real estate

According to the new wording of art. 30, para 1 VATA **the tax base** in case of property transfer shall be determined as the higher of the tax base calculated under the provisions of art. 29 VATA (all paragraphs) and the one under art. 46 LTCA (i.e. the value for tax purposes).

Simultaneously **the provision of art. 56, para 1 VATA**, providing a possibility the amount of the taxes and charges due for the transfer of ownership of a building to be deducted from the calculated VAT amount for the deal, **has been abolished**.

The amendment made to art. 34, para 1 VATA corresponds to the norm of art. 181 Territory Structure Act according to which “the right of constructing a building or part thereof can be a subject of a transfer deal as of the time of its granting till the completion of the building as a rough construction”. After the completion of the building as a rough construction certified by a protocol issued by the municipality (regional) administration, only the erected building itself or separate parts thereof can be a subject of a transfer deal. A clarification has also been made with regard to the treatment of the construction in progress existing at the time of transfer of the right to build.

3. Right to input tax deduction for social expenses

A supplementation has been made to Art. 64, para 5 VATA that specifies explicitly that such right to deduction of input VAT is also allowed with regard to VAT charged in connection with training and qualifications, and with the transportation from place of living to place of work of the individuals hired under management contracts.

4. Tax treatment of the services on management of collective investment schemes, investment companies and pension funds

A significant amendment has been made in art. 36 VATA connected to the amendments and supplementations of the Public Offering of Securities Act regarding the status and activities of the investment companies and contractual (mutual) funds, which have been published in SG, issue 39 of 2005. The scope of the exempt financial services also includes the activities on management of collective investment schemes, closed investment companies, pension funds as well as provision of investment advice regarding securities deals.

5. Registration threshold

The change in the registration threshold has been widely discussed in the course of debates on the draft of LASVATA. By the amendments to art. 110, para 1 VATA and art. 117, para 1, s. 1 VATA the threshold for **voluntary registration** and the threshold for **compulsory deregistration** under VATA has been changed from BGN 50,000 to BGN 25,000. The only transitional provision introduced in LASVATA **stipulates a postponement of the entering into force of this amendment till 1 April 2006**.

There are also other amendments of a more specific nature that are not subject to comments in this paper. The amendments of the provisions of VATA **shall be enforced on 1 January 2006** with the exception of those regarding the registration threshold, which as already mentioned shall enter **into force on 1 April 2006**.

The information provided in this paper gives a general view over the amendments and supplementations made to the Value Added Tax Act and is not exhaustive. For access to our detailed commentaries or in case any questions arise, regarded to application of the new provisions, please do not hesitate to contact us on tel. 943 37 00, at office@afa.bg, or on post address 38, Oborishte Str., Sofia 1504.