

## Adopted amendments to the VAT Law



On 25 September 2012 the National Assembly of the Republic of Serbia has adopted the Law on amendments of the VAT Law, which is published in Official Gazette of RS no. 93/2012 dated 28 September 2012.

The previous amendments to the VAT Law (the Law) were introduced in 2007. It can be said that these amendments are the most significant since the adoption of the Law.

### Application of adopted changes

With the exception of provisions which define application of general and reduced VAT rate, VAT charge paid to agricultural producers and VAT refund to buyers of the first apartment which are applicable as of 1 October 2012, all other provisions will be applicable as of 1 January 2013.

In addition, provisions related to compulsory VAT deregistration of taxpayers whose turnover is below RSD 2 million cease to be effective as of the day when the Law becomes effective.

### Importance of changes

Amendments to the Law, other than the change in the tax rate, can be grouped as follows:

- Amendments that clarify existing provisions of the Law or that transform existing practice into the Law provisions. Such amendments fundamentally do not result in different tax treatment of transactions;

- Amendments that regulate particular areas in a different way or where particular institutes are introduced for the first time through these Law amendments.

The most significant amendments are the following:

### Provisions applicable as of 1 October 2012

#### Tax rates

With the latest changes the general VAT rate will increase from 18% to 20% as of 1 October 2012. The reduced VAT rate will remain unchanged and would amount to 8%.

#### Application of reduced 8% VAT rate

In terms of taxation using the reduced rate of 8%, amendments are as follows:

- Maintenance and repair of streets, roads and other public surfaces and maintenance of public lighting will no longer be taxed at the reduced 8% rate, but would fall under general 20% rate.
- The term utility services is abolished and replaced by specific list of services that are subject to the reduced 8% rate.

#### VAT charge paid to agricultural producers

The VAT charge paid to agricultural producers is increased from 5% to 8%. The amendments specify that this VAT charge must be paid to a farmer's bank account. It is further specified that a farmer eligible for this VAT charge is considered to be the registered agricultural producer or member of its household.



assets to carry on business activities independently. This rule applies regardless of whether the transfer of total or part of total assets is executed via status change or sale.

Prior to these amendments, the condition for a part of total assets to constitute so called technical-technological unit or a functional whole did not apply to the transfers executed via status change. Changes to the Law aim to equate VAT implications of transfer of part or total assets via status change with those performed under (regular) sale, liquidation or bankruptcy.

### **Specifying advertising materials and samples which do not constitute VATable supply of goods**

The Law specifies that the provision of advertising materials and samples for prescribed mandatory analysis (e.g. sanitary inspection) does not constitute VAT-able supply of goods.

### **Supply provided by the Republic of Serbia and its institutions, autonomous provinces and local municipalities**

As was the case up to now, it is prescribed that the Republic of Serbia and its institutions, autonomous provinces and local-municipalities, including legal entities established in accordance with the law or based on acts of these institutions, are not subject to VAT when performing supplies within their particular institutional competence. However, based on the new provision these entities are to be considered as VAT taxpayers in case their supplies would undermine competition (if such supplies may be provided by other entities).

### **Reverse charge related to supply of waste materials**

A special rule is introduced for the supply of waste materials and services directly related to these supplies (waste materials).

A VATpayer acquiring waste materials is considered as tax debtor for supplies of waste materials performed by VAT registered vendor. The VAT registered vendor does not assess VAT on its invoice; instead VATpayer receiving these goods needs to apply reverse charge VAT assessment.

The aim of this provision is to restrain the waste materials black market. This special scheme is in line with the provisions of the VAT Directive.

VATpayer purchasing waste materials from an entity that is not VAT registered needs to inform the Tax Authorities on all purchases in excess of RSD 1 million made from vendors that are not VAT registered within 12 months.

A special rulebook will regulate in more detail what goods are considered waste material.

### **Reverse charge related to supply of buildings**

The possibility is introduced for a VATpayers performing supplies of buildings and economically separable units within such buildings (including ownership stakes in such buildings), as well as acquirers of these buildings and economically separable units within these buildings to opt to apply VAT on the transfer.

This provision facilitates practical application of financial leasing of real-estate.

## **Provisions applicable as of 1 January 2013**

### **Autonomous definition of VATable supplies related to lease**

In defining supplies of goods related to finance lease or rent agreements, there is no longer cross-referencing to the law which regulates leasing. This means that even supplies that are not part of financial lease agreements can be considered supplies of goods provided they meet prescribed criteria.

Namely, the plan is to issue a separate rulebook that will further define criteria under which the transfer of goods based on leasing or rent agreements will be considered a supply of goods.

### **Transfer of rights over real-estate property cannot represent auxiliary supply**

It is stipulated that a transfer of rights over real-estate property or rights over its separate economic unit(s), considered as real-estate property in terms of the law that regulates the transfer of rights over real-estate cannot represent auxiliary supply. This means that VAT treatment of these supplies is always considered separately.

Accordingly, the supply of a garage which accompanies the supply of an apartment will always be considered a separate supply. If these are considered as first transfer of ownership rights, the supply of garage will be subject to general VAT rate, while supply of the residential apartment will be subject to reduced VAT rate.

### **The supply of services without consideration is not subject to VAT**

The supply of services without consideration (i.e. free of charge services) is taxable only if these are rendered for the personal benefit of the founder, employees and other individuals, or non-business related. Free of charge services related to taxpayers business activities are no longer subject to VAT. This provision contributes to alignment of the VAT Law provisions with the provisions of the European Union VAT Directive (VAT Directive).

### **Specifying the transfer of total assets or part of total assets which is not taxable**

The transfer of total assets or part of total assets continues not to be taxable if prescribed conditions are met. Amendments to the Law specify that part of total assets is considered to be a group of assets that enables acquirer of

The following conditions need to be met in order to qualify for application of this option: both vendor and acquirer of real-estate need to be VAT registered, that this option is stated in the agreement between the parties, and that the acquirer (i.e. recipient of these goods) will use these goods for performing supplies that are taxable in Serbia.

The recipient of goods is a tax debtor for the supply of goods performed by another VATpayer. The VATpayer who performed the supply does not assess VAT in its invoice, while the recipient of goods is required to apply reverse charge VAT assessment.

#### **Reverse charge related to supplies in the construction industry**

A special rule is introduced for the supply of goods and services between two VATpayers conducting their business in the construction industry. This rule applies to the investor and the contractor as defined in accordance with the law that regulates planning and construction. This rule also applies to cases when investor is considered to be one of the following: the Republic of Serbia, its institutions, autonomous provinces and municipalities, (including legal entities established by these bodies in accordance with the law or based on acts of these bodies) who are not VAT registered.

The investor is a tax debtor for the supply of goods and services rendered by the contractor. The contractor does not assess VAT in its invoice; instead investor is required to calculate reverse charge VAT assessment.

#### **Place of supply of services**

It is specified that the following services are to be taxed according to the location (i.e. registered seat/habitual abode) of the service recipient: services of providing information over the telephone or using other media, clinical testing of medicinal products and medical devices, allowing access to natural gas networks and electrical energy transfer networks.

A separate rulebook is to define in more detail electronically provided services.

#### **Advance payments**

The Law specifies that advance payments solely relate to payments in cash.

#### **The moment of VAT payment related to supply provided by foreign entity**

It is specified that tax debtors, a tax representative or a recipient of goods and services, for supplies performed by a foreign entity, report VAT at the moment when supplies of goods and services are performed.

#### **Effect of foreign exchange gains and losses**

It is specified that foreign exchange gains and losses and any income and expenses arising from the application of the so-called foreign currency clauses do not result in changes of the VAT base provided that the same type of exchange rate (e.g. sales exchange rate, median National Bank of Serbia exchange rate, etc.) is applied at the moment of assessment of output VAT and at the moment of collection.

#### **Supplies within free zones and goods subject to customs warehousing procedure**

Tax exemption with recovery right of input VAT is introduced for supplies of goods and services within a free zone and for supplies of goods subject to customs warehousing procedure.

#### **Supply of Services of assessment of creditworthiness**

Services of assessment of creditworthiness are excluded from the list of VAT exempt services with no input VAT recovery, meaning these are now subject to VAT.

#### **Supply of goods for which no input VAT recovery was available to VATpayer at the time of their acquisition, and goods whose acquisition was subject to transfer tax or inheritance and gift tax**

List of VAT exempt supplies with no input VAT recovery right is extended to include supply of goods for which no input VAT recovery was available to VATpayer at the time of their acquisition, and goods whose acquisition was subject to transfer tax or inheritance and gift tax.

#### **Input VAT recovery of VAT assessed by the Tax Authority audit of its supplier**

The possibility is introduced for the VATpayer to realize input VAT recovery of VAT assessed by the Tax Authority audit of its supplier. This right is conditioned by such VAT being paid by the VATpayer to its supplier.

#### **Investments in leased buildings**

Adjustment of input VAT recovery is introduced for investments in buildings, whether own building or leasehold improvements, in cases when the VATpayer ceases to meet requirements for input VAT recovery within 10 year period. In view of this change and the change in the provisions relating to free of charge supplies, the Law would provide grounds for completely different VAT treatment of leasehold improvements compared to current treatment. There will be no obligation for the lessee to calculate/charge output VAT to the lessor at the moment when the leasehold improvement is made.

#### **The possibility for subsequent recovery of input VAT from acquisition of equipment, buildings and investments in buildings**

The possibility for subsequent recovery of input VAT from acquisition of equipment, buildings and investments in buildings is introduced. This possibility is conditioned by change in circumstances that prevented input VAT recovery in the first instance (i.e. at the time when these supplies were initially acquired). For instance, in cases when VATpayer that no longer uses equipment, buildings and investments in buildings for performing a VAT exempt supplies with no input VAT recovery but uses this same equipment for VAT-able supplies instead.

#### **The possibility for VATpayers to be entitled to input VAT recovery from acquisition of goods (excluding equipment and buildings used in conducting business) prior to their VAT registration**

The possibility is introduced for VATpayers to be entitled to input VAT recovery from acquisition of goods (excluding equipment and buildings used in conducting business) within 12 months prior to their VAT registration. One of the conditions for applying this possibility is that these goods are still owned by the VATpayer at the moment of its VAT registration.



### The mandatory VAT registration threshold

The mandatory VAT registration threshold is increased from RSD 4 million to RSD 8 million. Prescribed registration threshold relates to taxable supplies performed in the Republic of Serbia. The limit for voluntary registration has been withdrawn (it used to be RSD 2 million), which means that all entities whose taxable supplies are below RSD 8 million may voluntarily register for VAT. This amendment implies that compulsory VAT deregistration (that was applied to VATpayers which did not realize a certain amount of supplies during a calendar year) is practically abolished. An entity that registers voluntarily as a VAT taxpayer can do so at any time during the year, and not only during the period from 1 to 15 January, as in case prior to the amendments to the Law.

### Introduction of VAT cash accounting

VAT cash accounting (i.e. payment of VAT upon collection of receivables) is introduced. The proposed amendments to the Law refer to this system as the "collection system". The collection system can be applied by entities that realized supplies below RSD 50 million within prior 12 months. Additional conditions for application of the collection system are introduced, as well as transactions that do not qualify for application of this system.

### Obligations of the entity that is deregistered from VAT

An entity that is deregistered from VAT is required to perform stock count/inventory of goods and assess advances received in order to make appropriate adjustments of relating input VAT recovered.

### Obligation of VATpayers to keep documentation based on which VAT records are kept

It is prescribed that a VATpayers are required to keep related documentation (in addition to mandatory VAT records) based on which VAT records are kept until the expiry of prescription period for tax and at least 10 years upon expiry of the calendar year from the moment of the first use of a building and completion of investments in buildings.

### Tax period

The tax period for which a VAT tax return is filed and paid is (this prov:

- The calendar month – for VATpayers whose supplies exceed RSD 50 million and VATpayers applying collection system
- The calendar quarter – for taxpayers whose supplies do not exceed RSD 50 million and for tax debtors who are not VAT registered

### Filing VAT returns and payment of VAT liability

Deadlines for filing VAT returns and payment of VAT liability are changed as follows (these new deadlines are applicable for January 2013 VAT returns, i.e. January-March 2013 VAT returns):

- A VAT taxpayer whose tax period is the calendar month files VAT tax return within 15 days of the expiry of the tax period
- A VAT taxpayer whose tax period is the calendar quarter files VAT tax return within 20 days of the expiry of the tax period
- Tax debtors who are not VAT registered file VAT returns within 10 days of the expiry of the tax period
- Taxpayers undergoing VAT deregistration file VAT returns on the day of submission of deregistration request.

### VAT refunds to foreign taxpayers

VAT refunds are being introduced to foreign taxpayers.

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