

## **CHANGES TO THE VAT ACT (IN FORCE AS OF 1 JANUARY 2016)**

Certain amendments to the Value Added Tax Act (the "VAT Act"), which enter into force on 01.01.2016, were promulgated in State Gazette No. 95/08.12.2015.

The main changes concern the application and use of goods and services forming part of the business assets of a taxable person for the private use of the person or his staff, the revocation of the alleviated tax accounting regime for the fuel sales made from petrol bases as well as the reduction in the administrative sanctions for delays in charging VAT.

### **SUPPLY OF GOODS AND SERVICES FOR PRIVATE USE**

After the extensive discussions of various options to tax the private use of business assets by the taxable persons or their staff, which became popular with the public as "weekend tax", it turned out that only a small part of the initially discussed changes were finally adopted. In the end, the enforced amendments to the VAT Act step on the already existing provisions treating the private use of business assets by the taxable person or his staff as taxable supplies for consideration and specify when the VAT concerning that private use becomes chargeable and how the taxable base of those deemed taxable supplies should be correctly calculated.

Following the amendments, the taxation of the private use of taxable persons' business assets could be summarized as follows:

#### **When is the private use of goods and services taxable with VAT?**

The following transactions should be treated as a taxable supply of goods for consideration:

- the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or for purposes other than those of his business, provided that the VAT on those goods was wholly or partly deducted upon their manufacturing, importation or acquisition;
- the free of charge transfer of ownership or other rights in rem over the goods to third parties, where the VAT on those goods was wholly or partly deducted upon their manufacturing, importation or acquisition.

The following transactions should be treated as a taxable supply of services for consideration:

- the use of goods forming part of the assets of a business for supplying services for the private use of a taxable person, his owner or of his staff or, more generally, for purposes other than those of his business, where the VAT on such goods was wholly or partly deducted upon their manufacturing, importation or acquisition;

- the supply of services carried out free of charge by a taxable person for his private use or for that of his owner or staff or, more generally, for purposes other than those of his business.

The VAT treatment of the private use of goods and services as taxable supplies for consideration does not depend on the type of the goods or services used or supplied, neither on their value. Therefore, any private use of various business assets such as cars, mobile phones, computers, etc. may be subject to VAT. It is important to reiterate that the private use taxation is not something new and that it has been in force since the adoption of the VAT Act. Whether and how those provisions have been applied in practice by the taxable persons and the Bulgarian tax administration is another story.

### **When the private use of goods and services is not subject to VAT?**

The existing VAT Act provisions contain several exceptions from the general private use taxation rule which continue to apply:

- the provision of special, work, uniform and representative clothing as well as personal protective gear by the employer to his employees and management staff for the purposes of the taxable person's business;
- the provision free of charge of transport from the place of residence to the place of work and back by an employer to his staff, including his managers, when it is carried out for the purposes of the taxable person's business.

The 2016 changes introduce another exception concerning the supply of goods and services for private use or for purposes other than those of the taxable person's business, where that use is provoked by an urgent need or force majeure. In those circumstances the free of charge use shall not be treated as a supply for consideration and will not be subject to VAT.

### **When does VAT on the private use of goods and services become chargeable?**

The VAT Act amendments provide that the taxable event for the deemed supply of services for private use would be the last day of the month when the service has been supplied.

As to the private use of goods, its chargeable event would continue to be determined according to the existing rules pursuant to which the tax shall become chargeable on the date of the application or supply of the goods for private use.

### **How is the taxable base of the supply of goods and services for private use calculated?**

According to the existing rules the taxable base of the supply of goods for private use and of the free of charge transfer of ownership over the goods to third parties shall equal the taxable base of the goods upon their acquisition or the cost of goods.

As far as the taxable base of the supply of services for private use is concerned, the existing rule stipulated that the taxable base consisted of all direct cost incurred when supplying the service. This rule has been further developed and it is currently specified that when determining the direct cost of the goods used, where those goods would be non-current assets within the meaning of the Bulgarian Corporate Income Tax Act if used for the taxable person's business, a wear and tear expense is taken into consideration as part of the taxable base on which VAT has been wholly or partly deducted. That wear and tear expense is calculated for each tax period using the linear method for a 5-year period as of the tax period of the VAT deduction – for movable property, respectively for a 20-year period for the immovable property.

### **What if the goods and services are simultaneously used both for the business of the taxable person and for private use?**

The rules described above apply in cases, where the goods and services are supplied entirely for private use or for purposes other than those of the taxable person's business. The 2016 changes to the VAT Act aim at clarifying what should be the correct tax treatment when the goods and services are used both for private use and for the business of the taxable person, which is the most common situation in practice when it comes to company cars, computers, mobile phones, etc.

Pursuant to the new rules when goods and/or services are simultaneously used for the business of the taxable person as well as for private use, in order to determine the direct costs which form part of the taxable base of the services for private use, the taxable base should be distributed proportionally depending on the extent of the use of the respective goods and/or services for the private use of the taxable person, the owner or the staff, or generally for purposes other than those of the taxable person's business.

Unfortunately, the statutory provisions do not contain clear rules or guidance on the proper distribution according to the extent of use of the goods or services for business and for private purposes which will probably lead to uncertainties when the taxable persons calculate the taxable base for taxation and during tax audits.

### **Changes to the sales ledgers and VAT return forms**

According to the draft Bill for amendment of the Regulations Implementing the VAT Act published on the Ministry of Finance website the forms of the VAT sales ledgers and VAT returns would change and separate cells and columns shall be added, where the supplies of goods and services for private use should be reported.

### **REVOCAION OF THE ALLEVIATED TAX ACCOUNTING REGIME FOR FUEL SALES BY PETROL BASES**

Art. 118, para. 7 of the VAT Act, which provided that under certain conditions petrol bases may be exempted from the obligation to account for the sales of fuels by issuing a cash receipt and from transmitting distantly to the National Revenue Agency data for the available quantities of fuels in the storage tanks, has been abolished. All petrol bases have been provided with a 6-month period (until 01.07.2016) to render their activities in compliance with the general system of the VAT Act for accounting of fuel sales using cash register systems and for transmitting data from the level measuring systems in the fuel tanks to the National Revenue Agency.

### **REDUCTION IN THE ADMINISTRATIVE SANCTIONS FOR DELAYED CHARGING OF VAT**

The 2016 VAT Act amendments introduce lighter administrative sanctions for charging VAT after the lapse of the statutory deadlines, when the delay is within certain temporal limits.

Pursuant to the former rules all VAT registered persons who failed to charge the due VAT within the statutory deadlines were subject to a sanction amounting to 100% of the tax which was not charged in time, but no less than BGN 500.

The 2016 changes introduce differentiated reduced sanctions if the taxable person charges the due VAT within 6 months following the end of the month during which the tax should have been charged. In this case the sanction amounts to 5% of the tax, but no less than BGN 200, respectively BGN 400 for a repeated offence.

If the taxable person charges the due VAT following the lapse of the 6-month period above but no later than 18 months following the end of the month during which the tax should have been charged, the sanction would amount to 10% of the tax, but no less than BGN 400, respectively BGN 800 for a repeated offence.

Following the lapse of the 18-month period the taxable person would be subject to the heaviest sanction amounting to 100% of the due tax.

**EXTENSION OF THE PERIOD FOR APPLYING REVERSE-CHARGE TO SUPPLIES OF CEREALS AND TECHNICAL CROPS**

The domestic supplies of cereals and technical crops would continue to be subject to the reverse-charge mechanism until 31 December 2018.

**CHANGE IN ROUNDING UP THE PARTIAL VAT DEDUCTION COEFFICIENT**

The rule for rounding up the partial VAT deduction coefficient has been changed so that it will no longer be rounded up to the exact figure after the second decimal point but shall instead be always rounded up to a figure not exceeding the next whole number (e.g. 0,122 shall no longer be rounded up to 0,12 and shall be instead rounded up to 0,13).

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DELCHEV & PARTNERS