

CHANGES IN VAT EXEMPTIONS FOR CERTAIN GOODS AND SERVICES

On 29 October 2010 the Polish Parliament adopted the Act Amending the VAT Act. The amending act, effective 1 January 2011, makes numerous changes to the VAT Act of 11 March 2004, particularly with respect to subject-matter exemptions from VAT.

Annex 4 to the VAT Act, which contained a list of services exempt from VAT, has been repealed. From 1 January 2011 the list of services exempt from VAT is set forth in Art. 43 of the VAT Act, but it is a much shorter list than the previous one. Moreover, the exemptions will no longer be identified using the Polish statistical classification code (PKWiU). Instead, the new Art. 43 contains a description of the services.

Below we present the most significant changes in the types of services exempt from VAT.

Healthcare services

Through 31 December 2010, all healthcare services and social services (except for veterinary services) were exempt from VAT.

Beginning from 1 January 2011, the subject-matter exemptions in this respect are limited to services involving medical care, preventive care, and maintaining, saving, restoring or improving health, provided by healthcare facilities. Supply of goods and services closely connected with such services is also exempt.

Moreover, the exemption extends to services involving medical care, preventive care, and maintaining, saving, restoring or improving health, provided by physicians, dentists, nurses, midwives, psychologists and other medical professionals as defined in the Act on Healthcare Facilities of 30 August 1992.

This means that from 1 January 2011 the purpose of the services performed in the area of healthcare and social services as well as the entity that provides the services will be the relevant criteria. Thus, in general only services that involve diagnosis or treatment and are performed by one of the entities identified in the VAT Act will be exempt from VAT.

Educational services

Previously an exemption was available for all educational services. From 1 January 2011, the range of educational services entitled to a VAT exemption has been significantly restricted, and applies to services provided by:

- units included within the education system for purposes of regulations concerning the education system, with respect to learning and upbringing; and
- institutions of higher education, research units of the Polish Academy of Sciences, and research and development units, with respect to higher education.

Also exempt are:

- private instructional services at the preschool, elementary school, middle school,

secondary school and higher education level, provided by teachers;

- foreign language teaching services, and supply of goods and services closely connected with such services, other than those already mentioned;
- vocational training and retraining services other than those already mentioned (as well as supply of goods and services closely connected with such services) provided in forms and under the rules provided in separate regulations, or provided by entities that have obtained accreditation for purposes of provisions concerning the education system, but solely with respect to services covered by the accreditation or financed entirely out of public funds.

It should be noted that the exemption described above for educational services also includes supply of goods and services closely connected with the educational services referred to above.

This means that educational services will be exempt from VAT only when provided by the entities specified in the regulations. Commercial entities (e.g. training companies or associations) will generally have to charge VAT on educational services they perform.

Financial intermediation services

With respect to insurance and financial services, the amending act introduces definitions, based on economic criteria, specifying the nature and function of such services, regardless of the type of entity performing the services. In this respect, beginning from 1 January 2011, the following financial intermediation services will be exempt from VAT:

- insurance services, reinsurance services, and intermediation services with respect to insurance or reinsurance services, as well as services performed by an insurer under insurance agreements concluded by it for the account of another, excluding sale of rights acquired in connection with performance of insurance or reinsurance agreements;
- services of granting credit or monetary loans and intermediation in performance of services of granting credit or monetary loans, as well as administration of credit or monetary loans by the lender;
- services with respect to granting sureties, guarantees or other security for financial and insurance transactions, and intermediation in performance of such services, as well as administration of credit guarantees by the lender;
- services involving monetary deposits, conducting monetary accounts, payment transactions of all types, transfers of money, debts, checks and bills of exchange, and intermediation in performance of such services; and
- services involving financial instruments as referred to in the Act on Trading in Financial Instruments of 29 July 2005, excluding storage and administration of such instruments, and intermediation services in this respect.

The VAT exemption will also apply to services that do not in and of themselves constitute financial intermediation services, but which under the given circumstances constitute an element of a financial intermediation service without which the service could not be performed.

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