



Major Changes in Tax Law Regarding Branches and a Branch's Services to Customers

A bill introducing amendments to the VAT Act is currently being worked on in the Senate. The bill, which could come into force as early as 1 December this year, will change the rules concerning the obligation to pay VAT on the import of intangible services.

Import of services

The currently applicable Art. 17 Section 1.4 of the VAT states that persons acquiring intangible services (e.g., IT services, consultancy or advertising) from entities with their place of business, residence or stay outside of Poland are also classified as VAT payers.

This regulation gives rise to numerous interpretational problems. It is not clear who should pay VAT on the acquisition of intangible services if the service provider is a non-Poland-based entity with a fixed place of business in Poland (branch).

These doubts have led tax authorities to question VAT deductions by Poland-based customers on the basis of invoices issued by branches of businesses outside Poland, saying that the tax is paid by the wrong entity.

Voivodship Administrative Court ruling

On 7 March 2008 **the Voivodship Administrative Court in Wrocław (I SA/Wr 1803/07)** ruled that a Poland-based business that has been issued a VAT for intangible services cannot make tax deductions on the basis of that invoice, because it is not the branch that pays the tax, but the Polish firm or customer.

It has turned out that the customer – the Polish VAT payer – should pay tax on the import of services. This ruling could be the beginning of a series of unfavorable decisions regarding tax law and may have a negative impact on the profitability of purchases of intangible services from

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branches of firms outside Poland that occurred in 2008 and previous years.

Proposed amendments to the VAT Act

The amendment to the VAT Act that went to the Senate on 16 October this year is a consolidation of the Act with regard to this issue. It will be compulsory for Polish customers to record imported intangible services in cases in which the service provider does not have an office or fixed place of business in Poland (for example, a branch). If, however, the non-Poland-based entity has a branch in Poland that is a fixed place of business, it should be the party that pays VAT on the performed service (as it issued the Polish VAT invoice).

When the amendment comes into force, the party responsible for paying tax on intangible services will be the service provider (i.e., the branch) and not the customer, as is the case at the moment.

The suggested changes will have a major impact on payment for intangible services provided by branches of firms based outside Poland. This is because the changes are intended to make the rules for payment for those services more specific and, at the same time, introduce a standard for the practice of tax authorities and administrative courts with regard to these issues.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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