

Tax News (February 2016)

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1. Tax clarification concerning certain VAT issues

In the Clarification Letter No.4149 / 7 / 99-99-19-03-00-17 dated February 8, 2016 "On the main changes to the imposition of VAT", the State Fiscal Service of Ukraine (hereinafter – the "SFS") clarified a number of VAT novelties effective from 1 January 2016, including the following:

- registration of VAT payers cannot be annulled on the basis of the record on the physical absence of taxpayers at their place of registration or the absence of confirmed information regarding the taxpayer in the unified state register of entrepreneurs;
- the tax base for the supply of self-produced goods / services cannot be lower than their market value (before 1 January 2016 – not lower than the cost of goods sold);
- special rules have been established for the tax treatment of the supply (by sale or otherwise) of property acquired through foreclosure by banks and other financial institutions:
 - tax base for the operations is the positive difference between the price of supply and acquisition price of the property;
 - only the part of property's price which constitutes repayment of liability under loan agreement is exempt from VAT;
 - the formation of a tax credit by the banking institutions, upon an acquisition of the ownership rights on the property, is executed under the common procedure;
- VAT exemption has been granted to the supply of goods and services imported into Ukraine as international technical aid or financed by international technical aid, as well as import of humanitarian aid into Ukraine;
- supply of grain and industrial crops in the territory of Ukraine is subject to 20% VAT on general terms. The 0% rate is applied to the export of grain and industrial crops.

2. Approved procedure for VAT refunds

The procedure for maintaining registers of VAT refund applications has been approved by the Decree of the Cabinet of Ministers of Ukraine No.68 dated 22 February 2016 “On the Approval of Procedure for Maintaining VAT Refund Registers” (the “**Decree**”).

In accordance with the Decree, only applications filed after 1 February 2016 are to be entered into the registers. VAT refund applications that remain unsettled as at 1 February 2016 are not included to the registers.

Generally, the procedure includes the following key provisions:

- mechanism for inclusion of filed VAT refund applications by VAT payers, which comply with the criteria established by Article 200.19 of Tax Code of Ukraine (the “**TCU**”) (Register 1) and by VAT payers which do not comply with the criteria (Register 2), as well as updating the registries with the status of each application;
- registries are formed in accordance with the data presented in the VAT returns accepted by the SFS, as well as information received by the SFS under the terms of Chapter VII of the TCU;
- registers are formed in chronological order;
- data stored in the registries is updated by local SFS authorities on the official website on a daily basis.
- registries are composed of two parts: first part – date of application and general information on the taxpayer; second part – dates and amounts of VAT refunds updated on a daily basis.

3. Tax clarification on the procedure of completing Appendix 2 to the VAT return

The Letter of the SFS No. 6111 / 7 / 99-99-19-03-02-17 dated 22 February 2016 “On the procedure for completing Appendix 2 to the VAT return “Amount of positive input VAT of the reporting (tax) period, which is included to the VAT credit of the following reporting (tax) period (Д2)” clarifies the procedure of including input VAT into the VAT credit.

In particular, the SFS notes that column 2 of Appendix 2 should contain individual taxpayer numbers of each supplier.

4. Tax clarification regarding VAT treatment of supply of software

According to the SFS Letter No. 2720/6/99-99-19-03-02-15 dated 10 February 10, 2016, if the supply of software to the customer involves transfer of ownership to such software (in accordance with an agreement on the transfer of exclusive IP rights), such supply is exempt from VAT.

Detailed responses to the questions on the VAT treatment of supply of software are provided in the Comprehensive Tax Clarification on the VAT treatment of supply of software approved by the Ministry of Revenues and Duties of Ukraine on 7 October 2013 No 536.

5. Tax clarification on the VAT treatment of retrospective price adjustment

In the Letter No 2643/6/99-99-19-03-02-15 dated 10 February 2016 the SFS provided additional clarification on the VAT treatment of retrospective change of the price of supplied goods/ services.

If the price of supplied goods/ services was decreased:

- the supplier is entitled to decrease VAT liabilities on the basis of adjustment to the VAT invoice registered by the customer during a 15-day period. The respective decrease of VAT liabilities is reported in the VAT return of the reporting period in which the adjustment was made (including cases where the adjustment is made in the one period, but registered in another). If the adjustment to the VAT invoice is not registered within the established term, the supplier is entitled to decrease the VAT liabilities in the VAT return of the period, in which the adjustment was registered;
- the customer should decrease the VAT credit in the VAT returns of the period, in which the adjustment of the VAT invoice was made. Such adjustment should be registered within the established term.

If the VAT invoice adjustments in respect of the reduced price of supply is not registered by the customer within 180 calendar days, the supplier may not decrease their VAT liabilities. On the other hand, the customer is required to decrease the VAT credit for the period, in which the price of supply is reduced.

If the VAT invoice adjustment issued by the supplier after 1 October 2015 and provided to the customer for registration is not registered within the established term or is not registered within 180 days, the customer may be subject to penalties.

6. Tax clarification regarding the mechanism of filing environmental tax returns

In its Letter No. 5161/7/99-99-15-04-02-17 dated 15 February 2016 “On the processing of environmental tax returns” the SFS provided clarification regarding the filing of environmental tax returns.

The environmental tax return form provides the possibility to submit to the tax authorities multiple appendices representing each type of pollution and separate local government codes corresponding to the territories where the stationary sources of pollution or special disposal places or objects are located.

In order to reduce the number of filed environmental tax returns, it is recommended to supplement the tax returns with the required number of appendices.

7. Clarification on the use of facsimile signature in primary documents

According to the Clarification Letter of the SFS No. 2895/ 6/99-95-42-01-15 dated 11 February 2016, the use of facsimile signatures in primary documents does constitute violation of the law if such use is made with the written consent of the parties, which contains samples of handwritten signatures. Exception is made in respect of specialized forms of primary documents that do not allow the use of facsimile signatures.

Information stated herein has general nature and does not refer to any factual situation of any specific enterprise or individual. Despite we try to present accurate and timely information, we do not guarantee that this information is correct as on the date of its receipt or will be valid in future. Nobody should act or rely on such information without professional advice provided upon the study of the actual situation in detail.

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If any additional advice is required, please do not hesitate to contact **KPMG Tax and Legal Team** – [Sergey Popov](#), [Oksana Olekhova](#), [Andriy Kriakushin](#) (+380 44 490 5507).