



TAX SERVICES



TAX INFORMATION



Short information on changes in the
Polish tax regulations

In effect since 01 Jan 2013





We would like draw your attention to the following changes in tax regulations for 2013:

CORPORATE INCOME TAX (CIT)

On January 1 of this year regulations came into force concerning the correction of tax deductible expenses in the case when the amount of receivables due to a contractor has not been settled. The aim of these regulations is to decrease payment backlogs. However, they are very restrictive and in practice may lead to a considerable increase of burden placed upon the financial and accounting forces. These regulations apply to all expense documents, both domestic and foreign.

In accordance with the new regulations, in the case of failure to pay the invoice amount, the tax payer – debtor will have to correct the tax deductible expenses.

Should the parties determine a payment date of up to 60 days, such correction should be done within 30 days from the expiry of the payment date determined by the Parties.

However, in the case when the payment date determined by the parties will be longer than 60 days, the tax payer will be obliged to decrease the tax expenses by the amount resulting from the invoice or some other document at the expiry of the period of 90 days from the moment of recognizing such an amount as tax expenses, if within such period the amount will not be settled.

Such regulations apply respectively, in the case of purchasing or manufacturing tangible assets or purchasing intangible fixed assets, to such part of amortisation write-offs which were recognized as tax deductible expenses by the tax payer.

The Ministry of Finance issued a general letter (not a binding interpretation, but only clarification) in which it indicated that the new regulation pertaining to the correction of tax deductible expenses shall not apply to the expenses recognized as expenses in 2012. Therefore, according to the Ministry of Finance, the date of recognizing expenses in tax expenses is of crucial importance, not the date of payment falling after the change of regulations.

In the case when a fiscal year does not overlap with the calendar year and it began before 1 January 2013 and finished after 31 December 2012, till the end of that fiscal year the provisions of the act in its former wording, i.e. in effect until 31 December 2012, shall apply.

However, tax payers for whom the fiscal year began on 1 January are obliged to consider the indicated regulations.

SETTLING INVOICES AFTER MATURITY DATES



As one of the most significant changes, it should be indicated that from 01 January 2013 the agreement on the right of perpetual usufruct of land is considered as leasing for tax purposes. The definition of operating leasing in the case of a real property has changed – from 01 January 2013 the operating leasing will be considered already when the real property lease agreement has been concluded for at least 5 years (Previously 10 years).

The rule of fulfilling the conditions to become a party to a lease agreement (taking over a debt), as well as concluding consecutive agreements relating to the same object of lease has changed.

LEASING

PERSONAL INCOME TAX (PIT)

Apart from the above analogical changes of CIT, the changes consist in.

Limitation of applying the lump sum 50% tax deductible expenses on account of transfer of copyrights.

In accordance with the introduced limitation, in a fiscal year the total tax deductible expenses cannot exceed 1/2 of the amount constituting the upper limit of the first bracket of the tax scale, mentioned in art. 27 section 1 of the act, i.e. at present PLN 42.764. This limit shall apply to total revenues to which apply 50% tax deductible expenses obtained in a fiscal year both in the framework of the employment relationship as well as civil-law agreements.

VALUE ADDED TAX (VAT)

The regulation concerning the relief for the so called bad debts refers only to Polish VAT invoices. The so called bad debts relief, consists of the regulations giving the creditor, whose amount due has not been settled within the statutory deadline, the right to adjust the output tax and the taxable base.

SO CALLED BAD DEBTS RELIEF





REGULATIONS CONCERNING CREDITORS

In accordance with the new regulations, a tax payer (creditor) will have the right to correct the taxable base and the output tax for the supply of goods or the provision of services on the territory of the country in case of unsettled receivables for which 150 days have passed since the expiry of the payment date (and not 180 days as it is at present).

Therefore, doing such a correction will be possible in the settlement for the period in which 150th day passed from the receivables payment date, provided however, that until the day of submitting a declaration in which the correction is made, the receivable amount will not be settled or sold in any form.

A creditor may take advantage of the right, to which they are entitled, to correct at a later time. However, this correction can only be made within 2 years from the end of the year in which an invoice documenting the unsettled receivables was issued.

In the case when after submitting the declaration in which the creditor made a correction, their contractor has settled the amount due or this amount due will be sold in any form, the tax payer (creditor) shall have the obligation to increase the taxable base and the amount of output tax. This correction will be made in the settlement for the period in which the amount due was settled by the contractor or sold. In case of partial settlement of the amount due, the correction will be made in relation to that part.

Most significant conditions of a creditor adjusting the taxable base and the output tax:

1. No obligation to inform the debtor about the intention to correct the taxable base and the output tax by the creditor.
2. As on the day preceding the submission of the declaration in which the correction is made:
 - a creditor and a debtor have to be tax payers registered as active VAT payers
 - insolvency proceedings or winding-up cannot be in progress in relation to the debtor
 - submission, together with the declaration, in which the correction is indicated, the VAT-ZD form



REGULATIONS CONCERNING DEBTORS

In accordance with the new regulations the tax payer (debtor) will have an obligation to correct the whole (or a part) of the previously deducted input tax resulting from an invoice, if they fail to settle the whole (or a part) of the amount due within 150 days from the expiry of its payment date specified in an agreement or the invoice.

The obligation to make a correction lies with the debtor regardless of the fact whether their creditor took advantage of the bad debts relief or not.

In accordance with the new regulations, the correction should be made in the settlement for the period in which the 150th day passed from the expiry of the payment date specified in an agreement or an invoice.

Debtor shall not be obliged to make a correction in the case when they have settled the amount due on the last day of the settlement period in which the 150th day passed from the expiry of payment date of that amount due at the latest.

In case of the subsequent payment of the invoice, the debtor will have the possibility to make the correction again (in whole or in part) whose aim is to increase the input tax in the situation of the debtor's failure to settle the amount due (the whole or a part).



Sanction

In the case of a finding by a tax body or the fiscal inspection body that a debtor did not make the suitable adjustment of the input tax, a sanction will be imposed in the amount of 30% of the input tax which is subject to adjustment.

This sanction will not be imposed only in the case of individuals who will be subject, on the same account, to criminal liability pursuant to the Penal and Fiscal Code.



TRANSITIONAL REGULATIONS

New rules of using the so called bad debts relief apply to amounts due which will be created from 01 January 2013 and to amounts due which were created before that date, the irrecoverability of which has been made probable (pursuant to the new regulations) already in 2013, i.e. in 2013 the 150th day passed from their payment date.

In practice, it means that the new rules will apply to unsettled amounts due, and having a payment date specified in an agreement or an invoice for 04 August 2012 or later.

The rules of recognizing the tax obligation of the so called small business taxpayer who has chosen to settle the VAT according to cash accounting.

In the case of rendering a service for an active VAT tax payer, this obligation will be created in the full amount on the day of receiving the full payment or in the case of receiving a part of the payment – the tax obligation will be created in that part on the day of its payment. In turn, rendering a service for an individual or a tax payer unregistered as an active VAT tax payer, the tax obligation will be created in the whole amount on the day of receiving the full payment or in the case of receiving a part of the payment – the tax obligation will be created in that part. In both cases no later than on the 180th day counting from the day of giving out goods or rendering a service.

In the case of using cash accounting, an invoice should be marked with the phrase „cash accounting“. What is important, for the purchaser, hence the entity that purchases goods or services from a small business taxpayer who has chosen cash accounting, the right to deduct the VAT tax shall be created no sooner than at the moment of payment/partial payment – of the part in question.

CASH ACCOUNTING





CHANGES IN INVOICING

Most significant changes in invoicing include:

1. Contents of an invoice:

- invoices should be marked „Invoice“ instead of „VAT invoice“
- replacing the term „date of sale“ with „date of making or completing delivery or rendering a service“
- the possibility of including a discount on an invoice
- in the place of the previously allowed short business names of the supplier and purchaser, their full business names are to be used

In the scope of the above points, it is recommended to adjust the existing systems to the introduced changes, although in practice, one can still use the former notions, hence „VAT invoice“, short business name, or „date of sale“. Such a marking will not according to us, cause any negative consequences either for the supplier or for the purchaser.

- no necessity to provide a vehicle registration number on invoices concerning the purchase of fuel
- elimination of the term „VAT-MP invoice“, „margin VAT invoice“
- in the case of invoices to the total value of EUR 100 or PLN 450 there is a possibility of issuing invoices in a simplified form (the invoice does not have to contain the name and address of the purchase, measurement, unit price, value without tax, rate, net amount with division into rates, tax amount from the net amount with division into rates, provided it contains data which allow to determine the tax amount for individual tax rates)
- in the case of transferring the obligation onto the purchaser, the necessity to include the words „reverse charge“, in an invoice, in the case of applying cash accounting – the words „cash accounting“
- the possibility of not giving the purchaser's NIP no. In the case of invoices concerning VAT exempted sale
- the possibility of issuing an invoice by VAT exempted tax payers





2. Dates of issuing invoices:

- not later than on the 7th day from the day of issuing goods or rendering a service
- an invoice may document a few separate supplies of goods or services rendered within a month, if it is issued not later than on the last day of the month in which the goods were given out or a service was rendered Bei Verkäufen mit nachhaltigem Charakter ist die Rechnung, wenn der Steuerpflichtige auf der Rechnung nur den Monat und das Jahr der Verkaufsvornahme angibt, spätestens am 7. Tag nach dem Abschluß des Monats, in dem der Verkauf vorgenommen wurde, auszustellen
- in the case of continuous sales, if a tax payer specified only the month and year of sale on an invoice, the invoice will be issued not later than on the 7th day from the end of the month in which a sale took place
- in the case of receiving advances – not later than on the 7th day from the day on which it was received
- in the case of intra-community delivery of goods, an invoice will be issued not later than on the 15th day of the month following the month in which the goods were given out or moved
- in the case of rendering services for which the place of rendering is the place specified in art. 28b of the act – sale of services abroad – not later than on the 15th day of the month following the month in which the service was rendered

3. Correcting, increasing, invoices – introducing simplifications:

A correcting invoice issued in the case of increase of the price should include:

- consecutive number and the date of issue
- marking the supplier, purchaser as well as their NIP numbers
- name (type) of goods or services included in price increase
- amount of increasing the tax due

A correcting invoice issued in the case of finding mistakes, mentioned in section 1, should include:

- consecutive number and the date of issue
- marking the supplier, purchaser as well as their NIP numbers
- the correct contents of the corrected items, including the correct amounts
- the difference between suitable amounts indicated initially in the wrong amount and in the correct amount

4. Correcting, increasing, invoices – introducing simplifications:

The requirement of ensuring authenticity of origin, integrity of contents and legibility of an invoice. The authenticity of origin, integrity and legibility of contents can be ensured with the use of any business inspections which determine a credible audit path between an invoice and the supply of goods or the provision of a service.

In connection with the above changes, and in order to avoid unnecessary surprises and misunderstandings, we recommend paying income tax in advance (1/12 of the last settlement period).

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