

# VAT: the main weapon against fraud



**As of October 1, 2012, the amendment to the VAT Act (hereinafter referred to as the “VAT Act Amendment”) introduced new measures for the elimination of tax evasion and other fraudulent activities. At the same time, as of January 1, 2013, the VAT Act implemented EU directives which, inter alia, provide new invoicing rules to ensure the equal treatment of both physical and electronic invoices.**

The VAT Act Amendment became effective on October 1, 2012 with the exception of certain provisions which came into force on January 1, 2013, or will become effective only on January 1, 2014<sup>1</sup>.

The major changes to the VAT Act are as follows:

Subsidiary liability of the purchaser of goods or services in the domestic country for payment of VAT by the supplier:

The new legislation introduces the subsidiary liability of the purchaser of goods or services in the domestic country for payment of VAT by its supplier (in cases where both the purchaser and supplier are VAT payers) in case the supplier does not pay the VAT specified in the invoice or becomes unable to pay the VAT and the purchaser (at the time of the maturity of the VAT) knew, or on the basis of reasonable grounds should have known or could know that the whole or part of the VAT due on the goods or services would not be paid. The following cases are concerned:

- i. the amount specified in the invoice for the goods or services is unreasonably high or low,
- ii. the purchaser persisted in carrying out taxable transactions with a supplier who no longer fulfils the requirements for tax registration (e.g. in the course of the calendar year the supplier did not fulfil the obligation to file a tax return repeatedly or did not pay the due tax, the supplier could repeatedly

not be reached at the address of the registered seat, place of business, or operational premises), even after the date of publication of the supplier in the respective list maintained by the Financial Directorate of the Slovak Republic, or

- iii. at the time of the creation of the tax liability, the statutory body, member of the statutory body or the shareholder of the supplier was (a) the statutory body, (b) the member of the statutory body or (c) the shareholder of the purchaser.

The obligation of the purchaser as a guarantor in the above cases is not affected even if the supplier ceases to exist without a legal successor. The competent local tax office of the supplier shall impose an obligation on the purchaser to pay the outstanding tax within eight days after delivery of the decision. The purchaser may file an appeal against said decision within eight days after its delivery; however the said appeal does not have a suspensive effect.

The new obligation to lodge a security in the amount of at least EUR 1.000 - EUR 500.000:

The requirement to lodge a security for the period of 12 months in favor of the tax office and in the required amount applies in cases of both compulsory and voluntary registration for VAT.

This applies particularly in cases where the applicant is a natural

person who is or was an executive or shareholder of a legal entity that has or had tax arrears as at the date of its conclusion, or if an executive or a shareholder of this taxable person is a natural person who has tax arrears. This is also applicable to cases where the taxable person does not supply goods or provide services at the time of submission of an application for registration for VAT, but only carries out preparatory work for conducting business activities.

The VAT Act Amendment stipulates that a basic indicator for the specification of the security's amount is the risk that tax arrears of taxable persons will arise. In our opinion, practical problems may therefore arise due to the fact that no fixed rules are applicable with respect to the specification of the security's amount.

Monthly tax period

The basic tax period of the taxpayer is a calendar month; the taxpayer may choose the quarterly tax period<sup>2</sup> only under stricter conditions.

New rules on invoicing

As of January 1, 2013, new rules with respect to invoicing are effective. In particular these rules shall ensure the equal treatment of physical and electronic invoices.

The possibility of the tax office to cancel a VAT registration

In justified cases, the tax office is

entitled to cancel the registration of a VAT payer:

- i. upon the application of the taxpayer, if the conditions for de-registration are met,
- ii. if there are no reasons for further registration and in the case the taxpayer does not conduct business activities or ceases to conduct business activities or the taxpayer did not fulfil the obligation to file a tax return repeatedly or did not pay the due tax, or the taxpayer repeatedly violated obligations with respect to a tax inspection.

In this regard, we would like to point out that the taxpayer is obliged to apply for the cancellation of the VAT registration in the case the taxpayer ceases to conduct activities which are subject to tax in the domestic country. The VAT Act Amendment binds a legal entity which is wound up without liquidation, to notify the tax office before the dissolution takes place.

The current legislative approach measures are a reaction to repeated violations in the tax sector and seek to eliminate tax fraud and tax evasion. Time will tell whether these changes will in practise contribute to the improvement of the business environment for entities conducting business and prevent the abuse of the VAT system.



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<sup>1</sup> The VAT Act Amendment postpones the effectiveness of the provision regarding self-taxation of the import of goods from third countries outside the EU by the taxpayer from 1 January 2013 to 1 January 2014.

<sup>2</sup> A VAT payer may opt to become a quarterly payer if more than 12 calendar months passed from the calendar month in which the subject became a taxpayer, and for the previous 12 consecutive calendar months the subject did not achieve a turnover of EUR 100.000.