



NATIONAL REVENUE AGENCY

HEADQUARTERS

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ref. № NRA

Headquarters

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OFFICE OF THE NATIONAL REVENUE AGENCY

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DEPARTMENT ODOP

ON: Pursuant to Art. 96, para. 10 and 11 Law on Value Added Tax (VAT) effective from 1.1.2020 in respect of the condition of the consistent performance of the same activity in the same outlet of two or more related persons or persons acting in concert

The National Revenue Agency received numerous inquiries regarding the application of Art. 96, para. 10 and 11 of the VAT Act, questions which require clarification of the norm in so far as it regulates when it should be assumed that a uniform activity is carried out successively in certain stores with a view to the obligation to register under this norm.

In this context, this opinion is issued pursuant to Art. 10, para. 1, p. 10
Law on National Revenue Agency clarifying questions.

In SG. 96 of 12/06/2019 was promulgated Law amending the Law on Corporate Income Tax which made amendments to the VAT Act concerning compulsory registration of taxable persons in consistently performing the same activity in the same outlet of two or more related persons or persons acting in concert. The amendments come into force on 01.01.2020, the taking up new paragraph. 9, 10 and 11 to Art. 96 of the VAT Act and made additions to par. 1 and 5 by the same rule.



According to Art. 96, para. 1 VAT any taxable person established in the country with a taxable turnover of 50 000 Levs or more for a period not longer than 12 consecutive months before the current month is required within 7 days of the expiration of the tax a period during which reached this turnover to apply for registration under this Act. When turnover is reached for a period not exceeding two consecutive months including the current person is obliged to submit the application within 7 days from the date on which a turnover.

According to Art. 96, para. 10 of the VAT Act in the consistent performance of the same activity in the same outlet of two or more related persons or persons acting in concert in taxable turnover each additional person included the turnover in the object of all persons engaged in series activities in the object before him, for a period not longer than 12 consecutive months including the current month, and is considered the turnover of the person on the first day of commencement of homogenous activity at the site of that person. The activity is assumed to be homogeneous when there is a substantial identity in terms of two or more of the following characteristics: the goods or services used assets, personnel, trademark / name of the site, suppliers / customers.

According to Art. 96, para. 11 of the VAT Act is not considered that there is consistently carrying two persons of the same activity if there is a business interruption for more than one month from the date of suspension of activities by the previous person and the date of commencement of the person defining turnover under par. 10.

In § 34 of the TFP of the Amendment of the Corporate Income Tax Act was introduced transitional arrangements for taxpayers, under which a person who on the date of entry into force of this law meets the conditions for compulsory registration under art. 96, para. 1 in conjunction with para. 10 of the VAT Act, is required to apply for registration within 14 days of the enactment of this law, ie to 01.15.2020, the (inclusive).

In § 1 of the VAT Act created a new article. 93, which defined the term "persons acting in concert" within the meaning of Art. 96, para. 10 of the VAT Act and in accordance with the definition are persons in the management, control and / or capital involved related in § 1, p. 3 letters "a", "b", "c" and "l" of the additional provisions



relationships between or among any of them and a third person as existing between economic, organizational, family or other attachment / connection can be inferred that act in concert between them can agree on conditions other than normal.

In § 1, p. 3 of the Supplementary Provisions of TSSPC is a definition of "related parties". Under § 1, p. 3 b. "A", "b", "c" and "l" of the Additional TSSPC related parties:

"A) spouses, lineal relatives, collateral - to third degree; and relatives by marriage - to second degree, and for the purposes of Art. 123, para. 1 pt. 2 - when incorporated in a household;

b) employer and employee; c)

members; ...

l) persons, one of whom has made a donation to the other; "Under § 1, p. 41 of the RD of VATA"

Merchant "is any location or facility (e.g., tables, stands and the like) in the open or under sheds in or you are selling goods or services, even though the room or facility can be simultaneously used for other purposes (eg office, home or the like), part of the owned real property (eg garage, basement room or the like) or a production warehouse or vehicle by which sale.

The changes regarding the compulsory VAT registration aimed at the prevention of established practice of avoiding VAT registration, respectively the levying of VAT on supplies of goods and / or services from taxpayers. Manifestation of this practice is usually through a formal change of subject performing the same activity in the same outlet, before reaching the turnover threshold for compulsory registration under the Act. These individuals are legally independent but related in one form or another and act in concert. To prevent this practice rules provide specific summation of turnover for the formation of taxable turnover for compulsory registration of VAT taxpayers.

It is clear that the obligation to register in the specific hypothesis that rule of Art. 96, para. 10 of the VAT Act and related amendments to the cited legal texts, provides complex factual composition



It requires specific characteristics regarding the persons character and location of the activity, as well as the timing of activities, namely its consistent and continuous performance set by the norm period.

This opinion is intended to give explanation only on condition activity, requiring the registration of art. 96, para. 10 of VATA be carried out sequentially by two or more persons.

The interpretation of the words and expressions used in the regulations is governed by Decree № 883 of 24.04.1974 on the application of the Law on regulations issued pursuant to § 7 of the transitional and final provisions of the same Act. According to Art. 37 Finding words or phrases with established legal meaning are used in the same meaning in all regulations. If necessary deviation from the accepted sense of the word or phrase, with additional provision defines their meaning for the legislation. In this manner proceed when applying the normative act doubts may arise about the meaning of words or phrases.

The word "consistently" has no established legal meaning. In VAT no legal definition of the word for the purposes of the Act. Therefore, for its interpretation should be proceeds from its conventional sense. The term "succession" according to the Dictionary of Bulgarian language, published on the official website of the Institute for Bulgarian Language, BAS in its most basic sense means "that follows it, is performed in a specific order, one immediately after another."

In the aspect of normal term "succession" in the performance of the same activity in the same shop should be construed as a replacement or alternation in time of two or more taxable persons carrying out activities. It clearly appears from regulated in normal way for the formation of taxable turnover for registration, **which states that "... in taxable turnover each additional person It includes the turnover of the site all persons performed consistently activity in the respective object**

before him ... ". Since "immediately" means an act which is done or it should immediately rule on par. 11 Art. 96 of the VAT Act states as legally irrelevant interruption within less than a month. In this regard, if between the cessation of activity of a person in premises and starting



homogenous activity at the site of the next person, period expired more than a month in respect of the formation of turnover for the registration of this additional person provision of Art. 96, para. 10 of the VAT Act is unenforceable and speed of the preceding entities implemented in the site are not included in its turnover.

In view of the above, the registration obligation, based on summation of the speed of two and more persons under that rule does not occur when these people perform the same activity in the same object simultaneously with each other in parallel.

It should, however, be borne in mind that if a conducting parallel activities by persons acting in concert, is purely artificial and contrary to normal economic logic, there is reason also be treated as circumvention for the purpose of a tax advantage in which should be applied norm resisted this practice. This conclusion is based on the ruling in Case C-255/02, Halifax plc, that where a malicious practice, transactions on which it is based, must be redefined so as to restore the situation that would prevail in the absence of these transactions. Such a situation would have been as when a person designed to circumvent the new rule, approaching the threshold of taxable turnover for compulsory registration of art. 96, para. 1 VATA not formally terminated the activity on their own behalf and not leaving the facility, it makes public its continuation, but alongside it in the object uniform business started to execute another person. The first person formally continue the activity at the site, but so minimal volume as frequency and value reported it supplies, which analyzed by itself leads to uncontroversial conclusion that the presence / activity in the premises can not find economic justification and seeks to circumvent the effects of the provision of Art. 96, para. 10 of the VAT Act. In this case it must be considered that there is a cessation in the first person. The next person assumed in fact the work will fall into the hypothesis of Art. 96, para. 10 of the VAT Act and in taxable turnover should be included and the taxable turnover of the person formal continuing performing the same activity. It should be borne in mind that such cases should be carefully analyzed and specific registration under Art. 96, para. 10 of the VAT Act should be applied only when, except that there is uniformity of operation and concerted action of individuals, the situation has completely



artificial, for it lacks economic logic and the same objectives tax advantage.

Should pay attention also that tax abuses on avoiding VAT registration, respectively avoid charging value added tax on taxable supplies, not limited to the hypothesis of Art. 96, para. 10 of the VAT Act and the National Revenue Agency will continue to counteract them.

If there is a case example is undoubtedly the same activity in general use of assets and / or human resources, formally performed by two or more persons, especially when linked or act in concert and in the absence of clear and predefined objective criteria for the allocation of risks and the benefits of the activity, this could be an indication of uniting the efforts of individuals for common activities through a company under Art.

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(A matter that should be carefully studied). Under Art. 9, para. 2 TSSPC unincorporated be treated as a legal entity for tax purposes. An example of this hypothesis would be the case where the same office two or more persons carried out simultaneously in the same activity using total assets, including human resources, divided only benefits from the activity based on various criteria

such as their own status

registered / unregistered under the VAT Act. In the context of this opinion in that case the legal consequence would be the adoption of the taxable turnover of the participating

in unincorporated company persons for turnover on unincorporated and therefore its registration upon reaching the threshold for compulsory registration.

This opinion is fundamentally and each case should be evaluated independently of all relevant facts and circumstances.

10/01/2020, the

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Plamen Dimitrov VICE. NRA Executive Director Signed by:

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