



Article

Tax review: VAT

Selected judgments of the CJEU and the Supreme Administrative Court and changes in the scope of VAT



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"Tax review: VAT" presents selected recent rulings of administrative courts and the Court of Justice of the European Union, which may have a significant impact on

your business. It is also the most important and the latest information regarding changes in the scope of VAT.

Selected judgments of the CJEU and the Supreme Administrative Court

Are the services of telephone medical consultants exempt from VAT? This is not known even after the Court's judgment (judgment of the CJEU of 5.03.2020 in case C-48/19)

In a recent judgment of the CJEU, he had the opportunity to resolve the problem - which is now quite widespread - nowadays. Unfortunately, he did not do it clearly. The Court has admitted that the advice, which consists in clarifying the diagnosis and possible therapies, or proposing changes in treatment, can serve therapeutic purposes and thus benefit from the exemption. At the same time, he pointed out that providing general information about diseases and therapies and performing administrative activities such as forwarding contact to a doctor does not benefit from the exemption.

The premise for the application of the exemption is, however, one more condition: persons providing medical advice should have special qualifications guaranteeing an adequate level of services rendered. At the same time, it is not clear whether these are qualifications similar to doctors or other qualifications.

The consequences in practice

The judgment of the CJEU will raise very serious doubts in its application. However, there are so many court rulings regarding medical services on the one hand, and the services provided on the other, so that virtually every medical service provided today should be analyzed in detail in terms of VAT.

If the parent company delegates its staff to a daughter company and the latter is obliged to reimburse the costs incurred, the benefit is subject to VAT (judgment of the CJEU of 11.03.2020 in case C-94/19)

In this case, the parent company delegated its director to act as director of one of the subsidiary's plants. Therefore, the daughter company received invoices from the parent company based on the amount of costs of the delegated director.

The Court of Justice had no doubt that in such a situation there is an activity taxable with VAT - provision of services for consideration. This is not a refund "outside VAT". Such a conclusion is not changed by the fact that the amount of the burden is equal to the costs incurred by the posting company.



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The consequences in practice

The judgment concerns a situation often encountered in business transactions. In the light of the above ruling, companies posting staff to other companies in the group should analyze the related settlements of costs of posted persons from a VAT perspective.

Services of an architect regarding the construction of a pavilion at foreign fairs without Polish VAT

In its judgment of February 26, 2020 (reference number I FSK 1471/17), the Supreme Administrative Court assessed that verification of the architectural concept, preparation of the construction project as well as coordination and supervisory activities related to the construction of the pavilion for the EXPO exhibition in Italy are real estate services, and therefore taxed outside Poland.

The taxpayer in the application for an interpretation indicated that he is an architect and an active VAT taxpayer in Poland. He wanted to confirm that architectural services related to the preparation of the Polish pavilion for the EXPO exhibition, which are provided to the Polish VAT payer in accordance with special rules, should be taxed outside of Poland, at the place of location of the property. He submitted that his services were directly related to the investment process in the form of building a pavilion on a specific property located in Italy, whose location, location or area determined all of his activities.

The interpretative body considered that the taxpayer's services did not have a sufficiently direct connection with the property and the place of their provision should be determined on general principles. In the opinion of the authority, the purpose and essence of the services provided was to enable Poland to participate in EXPO.

The WSA in Warsaw examining the taxpayer's complaint disagreed with the position of the authority and emphasized that architectural services related to the preparation of the exhibition pavilion were intended for a specific property, specific building and location. Ultimately, the taxpayer was also right by the Supreme Administrative Court, which also had no doubt that the taxpayer's services were related to real estate located in Italy and should be subject to VAT there.

The consequences in practice

This NSA verdict confirms the position that architect services related to the construction of objects, if they are intended for a specific property, should be taxed in the country of location of the property. For this reason, taxpayers performing this type of activity should verify whether they should register for VAT purposes in other countries in order to settle VAT in connection with their services.



Acting as the provision helping services may result in the creation of an FE

Yes No

The Supreme Administrative Court in its ruling of February 26, 2020 (reference number I FSK 1313/17) recognized that a German company

which concluded a cooperation agreement with a Polish company for an indefinite period, under which it requires processing services for its goods temporarily in the territory Poland, has a permanent place of business in the country.

In the request for interpretation, a company based in Germany indicated that it did not have permanent technical facilities or infrastructure in Poland. She explained that she entrusts the goods she owns to the Polish contractor. These goods are stored in the Polish contractor's warehouse, and eventually processed and transported back to Germany. The company added that it employs only one employee in Poland, who, for example, represents her during the fair. She emphasized that all strategic decisions are taken by the management board and authorized employees of the company in Germany.

The interpretative body considered that in the light of the described facts, the company has a permanent place of business in Poland, which is characterized by sufficient stability and appropriate structure in terms of personnel and technical facilities.

Also, the Provincial Administrative Court in Warsaw considered that the company's activity was characterized by sufficient stability and adequate structure in terms of personnel and technical facilities to recognize that it had a permanent place of business in Poland. He assessed that the availability of the facilities used by the German company is comparable to the availability of its own facilities because it uses the warehouses of the Polish contractor, its equipment and professional staff. The NSA shared the position of the court of first instance.

The consequences in practice

The above judgment was made after the Advocate General CJEU's favorable opinion on taxpayers was presented in the case, C-547/18. However, it is worth waiting for the CJEU verdict with further conclusions, as it may have a decisive impact on the practice of Polish tax authorities and administrative courts.

Changes in the law

Postponing the introduction of JPK_VDEK for large enterprises in connection with the COVID-19 epidemic

The government pages announced the postponement of the entry into force of the new JPK_VDEK file for large entrepreneurs from April 1 to July 1, 2020. The change in the deadline for implementing the new reporting rules for the new JPK file is to be one of the elements of the shielding package for companies in connection with coronavirus. The Ministry of Development is preparing a draft act on this matter.

JPK_V7M and JPK_V7K structures from July 1, 2020.

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We would also like to point out that in addition to postponing the JPK_VDEK, the proposals for legislative changes are to support companies,

including by:

- credit reliefs,
- improving financial liquidity of companies
- and protection and support of the labor market.

JPK_VDEK and the code "09" for medicines

In connection with the situation resulting from the appearance on the territory of the Republic of Poland of the SARS-CoV-2 virus (causing COVID-19 disease), the Minister of Health in the announcement of March 5, 2020 published a list of medicinal products, foodstuffs for particular nutritional uses and medical devices threatened by lack of availability on the territory of the Republic of Poland. This notice has been in force since Friday 6 March 2020.

Please note that the sale of medicines and medical devices included in the above list should be reported in the JPK_VDEK file with the appropriate code of the goods and services group "09".

New VAT matrix in a few days

Already on April 1, 2020, the provisions establishing a new VAT rate matrix will enter into force. Taxpayers have little time to adjust to the resulting changes in VAT rates.

About what awaits entrepreneurs due to changes in VAT rates, we wrote, among others in the article presenting the answers to questions asked during the webcast "Changes in VAT rates".

Design of the shielding package for entrepreneurs

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New matrix of VAT rates and Binding Rate Information (WIS)

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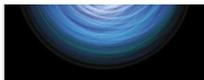
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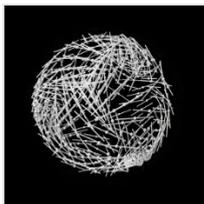
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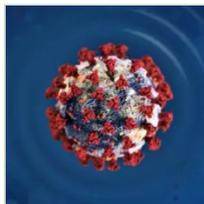
Tax measures coronavirus



Whitelist - severe sanctions and penalties are getting closer



Little more than a week until the entry into force of the provisions introducing sanctions for making a transfer to an account outside the White List



Coronavirus - the biggest challenges and problems of entrepreneurs in relation to the epidemic

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