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analyzes

Activities carried out by local government units in the field of public education and social assistance are not subject to VAT



Official interpretation of the Minister of Finance of June 10, 2020

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Newsletter "VAT in local government" (10/2020) | June 15, 2020

June 10 this year a general interpretation was issued, in which the Minister of Finance indicated that JST does not act as a VAT taxpayer when it performs tasks related to public education as well as to social assistance.

According to the current uniform interpretation line of tax authorities, the activities carried out by local government units as part of the implementation of public tasks in the field of public education and social assistance were subject to the VAT Act. However, in the vast majority of their decisions, administrative courts considered that JST providing these services for a fee, in accordance with art. 15 paragraph 6 of the VAT Act, **they are not VAT payers and are not obliged to show the turnover achieved in this respect in VAT returns.**

In the light of the above interpretation differences, it should be noted that on June 10 this year a **general interpretation** was issued, **which covered not only tasks related to public education, but also to social assistance**. The Minister of Finance pointed out that in the event that LGU carries out activities subordinated to a strict public-legal regime and when the fees received cannot be treated as an equivalent of the services provided, **LGU does not act as a VAT taxpayer, and as a consequence these benefits should not be subject to VAT** (reference number PT1.8101.3.2019PT1.8101.3).

In this interpretation, the Minister of Finance, as not subject to the VAT Act, listed the following benefits:

- providing food for the wards of institutions,
- kindergarten care over the core curriculum,
- issuing duplicate school IDs or duplicate school-leaving certificates,
- organizing so-called schools "Green schools",
- care services for single people requiring the help of other people,
- providing a stay in a nursing home, where payment for benefits is usually determined by decision.

In our opinion, the change in the current position of the Minister of Finance should be welcomed. The new approach takes into account the conclusions of the nearly uniform jurisprudence of administrative courts. However, due to the fact that the benefits listed in the general interpretation are not a closed catalog, you can potentially expect further disputes between the tax authorities and LGUs in selected specific cases.

We would also like to note that some local government units have followed the individual interpretations they have received. In practice, this could involve a corresponding change in the previous method of documenting and accounting for payments received. On the other hand, the issue of the general interpretation in question may in some cases cause that the methodology of settlements for VAT purposes adopted as a result of compliance with the individual interpretation obtained has become incorrect. However, the Minister of Finance noticing the above problem indicated that his current change of approach, presented in the general interpretation, does not generate discrepancies in the VAT due, thus the questioning of settlements in this respect should be considered unfounded.

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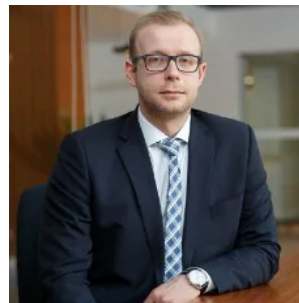
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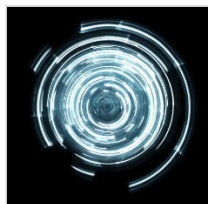
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