

# Proposal for amendments to the Bulgarian tax legislation

17 October 2016

## In brief

On 11 October 2016 the Council of Ministers submitted a proposal for amendments to the Bulgarian tax legislation to the National Assembly. The proposal suggests introducing amended rules for the VAT treatment of lease contracts, new rules for proportional VAT deduction regarding immovable property and other assets used for mixed supplies, administrative simplifications in the area of excise duties, simplified procedure for correcting filed returns, as well as other amendments to the tax legislation that may have an impact on your business.

### **Value Added Tax Act (VATA)**

#### **Supplies of goods under lease contracts**

Currently, according to the Bulgarian VAT Act, it is considered that a supply of goods is taking place under a lease agreement at the handing over of the goods in the following cases:

- a lease agreement in which an explicit transfer of ownership is agreed;
- a lease agreement with an option for transfer of ownership if the total amount of lease installments, excluding the value of the financial service, is identical to the market value of the item.

It is proposed that a supply of goods under a lease agreement will take place at the actual handing over of the goods in the following cases:

- when a transfer of ownership at the end of the lease agreements is agreed;
- transfer of all risks and rewards from the ownership of the item;
- the present value of the sum of all instalments under the

lease agreement (with or without an option for transfer of ownership), excluding the value of the financial service, is practically identical to the item's market value at the date of handing over of the item.

#### **New VAT rules for consortiums**

According to the proposal of the Ministry of Finance, contributions of goods/services by partners in unincorporated entities (i.e. consortiums) should not be considered supplies of goods/services in the cases when they are contributed for achievement of a common goal under an agreement for establishment of an unincorporated entity.

The partner contributing goods/services for achievement of the common goal will have the right to deduct input VAT and the obligation to perform adjustments of the VAT credit. Respectively, no rights and obligations under the VAT Act will arise for the unincorporated entity in relation to the received goods/services.

Based on the proposed amendments, the participation of a VAT registered partner in an unincorporated entity shall automatically trigger a mandatory VAT registration for the unincorporated entity.

#### **New rules for input VAT deduction regarding immovable property and other assets used for mixed supplies**

The proposal envisages new VAT deductibility rules regarding immovable property (acquired or built) and other assets (qualifying as fixed assets under CITA) used for both business and private purposes. In such cases the input VAT should be deducted proportionately depending on the percentage of the business use.

Allocation criterion, providing the most precise calculation of the VAT amount related to the business use, taking into account the specifics of the immovable property/assets, should be applied for calculation of the VAT credit. The NRA should be notified on the selected allocation criterion, whereby the specific procedure

is envisaged to be described in the Regulations for application of the VAT Act. The persons are allowed to change the selected allocation criterion once per year and in such case the National Revenue Agency should be notified.

It is suggested that the above be applicable also to cases of establishment of any rights *in rem* over an immovable property.

#### ***Annual adjustments of input VAT deduction for immovable property and other assets***

The suggested amendments envisage annual adjustment of the input VAT for immovable property and other fixed assets instead of the one-off adjustment rule applied currently. The adjustment should be performed in the last tax period by issuing and reporting a protocol. The period for annual adjustments of immovable property will be 20 years (starting from the later between the year of deduction of input VAT and the year of commencement of the actual use). For other assets, the period will be 5 years. If the input VAT has not been deducted, the 5/20-year period will start from the year of the expiration of the period for input VAT deduction on the respective invoice.

#### ***Changes in the pro-rata coefficient for input VAT deduction***

Currently, the denominator of the pro-rata coefficient for input VAT deduction includes, in addition to other components, the sum of the supplies/activities that are out of scope of the economic activity of the person. It is suggested that they are included in the denominator only if input VAT related to these supplies/activities has not been deducted.

#### ***New rules for issuing debit/credit notes in specific cases***

The suggested amendments envisage rules for issuing credit notes in the following specific cases:

- A credit note for returned advance payment should be issued not later than 5 days after the date of the return of the advance payment;
- A debit/credit note issued after the date of a VAT deregistration of a person should be initiated only upon prior written notification to the tax authorities.

#### ***Corrections of incorrectly reported or missed tax document in specific cases***

The proposal introduces the possibility to make corrections of incorrect tax reporting documents in situations where the person has already been deregistered for VAT purposes. In this respect, the entity should make a written notification to the tax authorities for the established incompliance. Upon receiving a confirmation from the authorities, the corrections should be performed with the submission of a new VAT return and ledgers.

#### ***New rules for B2B supplies between tour operators***

It is suggested that supplies of single tourist services between tour operators fall within the scope of the tour operator margin scheme (TOMS). Currently, these supplies are explicitly excluded from the TOMS and the general VAT rules for services are applied. This amendment is in line with the practice of the Court of Justice of the Europe Union on the topic.

### ***Excise Duties and Tax Warehouses Act (EDTWA)***

#### ***Administrative simplifications for various procedures***

According to the suggested amendments, a certificate for absence of tax or social security liabilities will no longer be required in the following cases:

- issuing a certificate for end customer exempt from excise duty;
- issuing of a license for the operation of a tax warehouse;
- mandatory registration under the EDTWA by persons who import/acquire/trade with coke, coal, electricity and natural gas;
- registered consignee/consignor status.

#### ***Tacit denial for excise duty exemption***

Currently, entities applying for certificate for end customer exempt from excise duties, denied exemption upon established incompliance by the customs authorities, are being informed explicitly about the denial through a written decision. The proposal, however, envisages tacit decision for refusal of the exemption, if no written decision has been received by the entity within the terms defined under the Bulgarian EDTWA.

#### ***Changes in the excise duty rates for cigarettes***

If adopted, there will be changes in the current excise duty rates regarding cigarettes in the following manner:

- an increase in the specific excise duty rate from BGN 70 to BGN 101 per 1,000 pieces;
- a decrease in the proportional excise duty rate:
  - for 2017 – from 40% to 27% of the selling price;

- for 2018 – from 42% to 28% of the selling price.

### ***Refund of excise duties on alcohol used for cleaning purposes in the production of medicines***

According to the suggested amendments, the excise duty on alcohol used for cleaning purposes of facilities for the production of medicines will be subject to refunding. This is in line with the judgment of the CJEU on the Bulgarian case C-306/14 (Biovet).

### ***No refund of excise duties for certain additives for lubricating oils***

Currently, excise duties are refunded for additives for lubricating oils containing petroleum oils or oils obtained from bituminous materials and other chemical products used for purposes different from motor or heating fuel. It is proposed that the possibility for a refund of excise duty in these cases is abolished.

### ***New requirements for foreign traders***

Entities registered as traders in EU or EEA will have the right to apply for a certificate for an end customer exempt from excise duties if they have a registered branch in Bulgaria.

Moreover, EU or EEA entities registered under the Bulgarian EDTWA as specialized small distilleries and/or small wine producers shall perform such activity through an established branch in Bulgaria. This rule is further applicable to entities upon mandatory registration under the EDTWA for their performance of transactions with coals, as well as to the production, import or entry of coals in Bulgaria.

EU and EEA registered entities licensed under the Energy Act of Bulgaria and selling electricity and/or natural gas for household and industrial purposes have the option to perform such an activity through a branch or a tax

representative under the VAT Act. The tax representative is envisaged to have joint and several liability for the liabilities of the foreign person.

### ***New option for selling tobacco products from motor vehicles***

Currently, the EDTWA regulates only the sites, explicitly allowed to be used for trade with tobacco products. The usage of motor vehicles for such trade has not yet been regulated under the EDTWA.

The proposal envisages that licensed traders of tobacco products shall have the option to perform trade from motor vehicles without a preliminary request but after providing the identification information of the motor vehicles to the customs authorities.

### ***Additional requirements for controlling technical devices installed on some vehicles***

Further requirements for controlling the working order of the GPS devices installed on motor vehicles and vessels for transportation of energy products for heating purposes have been proposed.

In this respect, entities operating with such vehicles shall be liable to ensure and monitor the order of the GPS devices and that of other devices for controlling and measuring purposes on a regular basis. If the customs authorities establish that the above requirements have not been met, the operator may lose its certificate per approved transportation vessel.

### ***Personal Income Tax Act (PITA)***

#### ***New rules for income from winnings and awards***

Currently, monetary and non-monetary awards from participation in games, not qualified as gambling, where the winnings are determined randomly, are non-taxable.

The proposed amendment provides for exemption from taxation only of winnings with insignificant value (up to BGN 30) from entertaining gambling machines as well as from participation in games where the winnings are determined randomly. Any other income from games, not qualified as gambling, will be taxable.

#### ***Income taxable with one-off tax***

Currently, Bulgarian tax residents who have acquired particular types of foreign source income, taxable with one-off tax in Bulgaria, have to declare and pay the tax themselves on a quarterly basis. These are, for example, dividends and liquidation proceeds, interest on foreign bank accounts and others.

The proposal is these types of income to be reported and taxed on an annual basis only with the annual tax return.

#### ***Contributions in kind***

Currently, no tax is due at the moment of acquisition of stock and shares against a contribution in kind in a company. The tax becomes due at the subsequent disposal of the stock and shares.

The proposed amendments concern scenarios where a contribution in kind was made in a company and subsequently the company disposes off that contribution and as result reduces its capital and makes a payment to the individual who had made the contribution in kind. In such case it will be considered that the individual has received taxable income from the sale of assets at the date of registration of the capital reduction at the Commercial register.

#### ***Tax relief for non-cash payments***

There is a proposal for introducing a tax relief for individuals who use non-cash methods for payment of their expenses.

The requirements will be: 100% of the taxable income to be received by bank transfers; at least 80% of the expenses of the individual to be paid by non-cash methods; and the individual must have no outstanding public liabilities at the date of filing of the annual tax return. The tax relief will be 1% of the outstanding tax due for the tax year, but capped to BGN 500.

### ***Filing tax returns and declarations***

There is a proposal related to both the Personal Income Tax Act (PITA) and the Corporate Income Tax Act (CITA), whereby the tax returns will be filed only electronically and the discount for early submission shall be eliminated.

These amendments are expected to apply as of 1 January 2017 for companies and as of 1 January 2018 – for individuals.

The declaration under art. 73(1) of the PITA, prepared by companies and self-insured persons for non-employment related income paid during the year, will be filed only electronically by 31 January of the following year, instead of 31 April.

The special tax return under Art. 55(1) of the PITA will also be filed only electronically. For companies, payers of relevant income, this obligation will enter into force as of 1 January 2017 and for individuals – as of 1 January 2018.

### ***Simplified procedure for correcting tax returns already filed***

According to the envisioned amendments to PITA, individuals will be allowed to file a one-off corrective tax return without a penalty by 30 September of the following year. The above-amendment applies further to CITA, i.e. had companies established any

accounting errors following the initial submission of the tax return, these are allowed to file a corrective tax return by 30 September of the following year, as well. However, if errors relate to past periods, the general rule for corrections applies, i.e. the companies have to submit a written notification to the National Revenue Authorities. The competent tax authority will in turn undertake actions to correct the taxable result not later than 30 days following the filing of the written notification.

### ***Local Taxes and Fees Act***

The scope of the taxable persons has been clarified, whereby when title of ownership and a concession of immovable property are simultaneously present, all of the liable persons, i.e. the owner and the concessioner, shall pay taxes, corresponding to their respective part of the property.

The implementation of the new methodology for calculation of the garbage collection fee (i.e. by applying a base other than the tax value/gross book value or the market price of the real estate) is postponed by one year and should enter into force as of 1 January 2018.

### ***Accountancy Act***

The definition of an enterprise under the Accountancy Acts is clarified, i.e. the branches of the foreign traders will fall under the above definition. The types of partnerships falling within the scope of the definition of an enterprise under the Accountancy act are explicitly listed.

Liquidators of entities will be liable to keep the accounting information, which does not have to be submitted to the National Social Security Institute, for the periods

specified in the Accountancy act.

The proposed amendments envisage higher criteria for categorising groups of enterprises. The proposal enables to define the categories of groups of enterprises on the basis of the sum of the figures from the individual financial statements of the entities within the group and not on the basis of the consolidated figures.

A specific definition is to be introduced for enterprises that have not performed activity during the reporting period. Currently the highly restrictive definition under the CITA is applied, and as a result, microenterprises and joint stock companies that have not performed any activity during the year cannot apply the reliefs envisaged in the Accountancy Act.

### ***Limitation of Cash Payments Act***

The proposal envisages a lower threshold for cash payments in Bulgaria, i.e. from BGN 10,000 to BGN 5,000.

### ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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