

Know your new VAT

With new VAT regulations in place since the beginning of this year it is worthwhile to review VAT exemptions and new criteria for VAT-exempt services



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On October 29, 2010, the Polish Parliament adopted the Act Amending the VAT Act. The amending act, effective January 1, 2011, made numerous changes to the VAT Act of March 11, 2004, particularly with respect to subject-matter exemptions from VAT.

Annex 4 to the VAT Act, which contained a list of services exempt from VAT, was repealed. From January 1, 2011, all services exempt from VAT are set forth in Art. 43 of the VAT Act, but it is a much shorter list than the previous one. Moreover, the exemptions are no longer identified using

Supply of goods and services closely connected with such services is also exempt.

Moreover, the exemption extends to services involving medical care, preventive care, and maintaining, saving, restoring or improving health, provided by physicians, dentists, nurses, midwives, psychologists and other medical professionals as defined in the Act on Healthcare Facilities of August 30, 1992.

This means that from January 1, 2011, the purpose of the services performed in the area of healthcare and social services as well as the entity that provides the services are the relevant criteria. In general, only services that in-

Academy of Sciences, and research and development units, with respect to higher education.

Also exempt are:

- private instructional services at the preschool, elementary school, middle school, secondary school and higher education levels, provided by teachers;
- foreign language teaching services, other than those already mentioned; and
- vocational training and re-training services other than those already mentioned, provided in forms and under the rules provided in separate regulations, or provided by entities that have obtained accreditation for purposes of regulations concerning the education system, but solely with respect to services covered by the accreditation or financed entirely out of public funds.

It should be noted that the exemption described above for educational services also includes supply of goods and services closely connected with the educational services referred to above.

This means that educational

cial services are exempt from VAT:

- insurance services, reinsurance services, and intermediation services with respect to insurance or reinsurance services, as well as services performed by an insurer under insurance agreements concluded by it for the account of another, excluding sale of rights acquired in connection with performance of insurance or reinsurance agreements;
- services of granting credit or monetary loans and intermediation in performance of services of granting credit or monetary loans, as well as administration of credit or monetary loans by the lender;
- services with respect to granting sureties, guarantees or other security for financial and insurance transactions, and intermediation in performance of such services, as well as administration of credit guarantees by the lender;
- services involving monetary deposits, conducting monetary accounts, payment transactions of all types, transfers of money, debts, checks and promissory notes, and intermediation in performance of such services; and
- services involving financial instruments as referred to in the Act on Trading in Financial Instruments of July 29, 2005, excluding storage and administration of such instruments, and intermediation services in this respect.

The VAT exemption also applies to services that do not in and of themselves constitute financial services, but which under the given circumstances constitute an element of a financial service without which the service could not be performed.

The descriptive approach to defining services exempt from VAT may raise numerous doubts in practice, particularly in the case of complex or atypical services. Businesses providing services that were exempt from VAT under the previous regulations need to check whether the same services are still exempt under the recently amended VAT Act. ❖

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the Polish statistical classification code (PKWiU). Instead, the new Art. 43 contains a description of the services.

Below we present the most significant changes in the types of services exempt from VAT.

Healthcare services

Through December 31, 2010, all healthcare services and social services (except for veterinary services) were exempt from VAT. Beginning from January 1, 2011, the subject-matter exemptions in this respect are limited to services involving medical care, preventive care, and maintaining, saving, restoring or improving health, provided by healthcare facilities.

involve diagnosis or treatment and are performed by one of the entities identified in the VAT Act will be exempt from VAT.

Educational services

Previously a VAT exemption was available for all educational services. From January 1, 2011, the range of educational services entitled to a VAT exemption has been significantly restricted, and now applies to services provided by:

- units included within the education system for purposes of regulations concerning the education system, with respect to learning and upbringing; and
- institutions of higher education, research units of the Polish

services are exempt from VAT only when provided by the entities specified in the regulations. Commercial entities that do not meet these criteria (e.g. training companies or associations) generally have to charge VAT now on educational services they perform.

Financial services

With respect to insurance and other financial services, the amending act introduces definitions, based on economic criteria, specifying the nature and function of such services, regardless of the type of entity performing the services. In this respect, beginning from January 1, 2011, the following finan-