

# A loan granted for a fee by a VAT taxpayer is a service

## I. VAT must be paid on the supply of goods and services performed for a fee

According to the effective regulations, the following are subject to taxation with value added tax: supply of goods for a fee or provision of services for a fee within the territory of the country; export of goods; import of goods into the territory of the country; intra-Community acquisition of goods for a fee in the territory of the country; intra-Community supply of goods. A supply of goods is understood as transfer of the right to disposal of the goods in the capacity of an owner.

## II. If something is not a supply of goods, it must be categorised as provision of services

Provision of services is understood as any consideration for the benefit of a natural person, legal person or an organisational unit without legal personality that is not a supply of goods, including also: transfer of rights to intangible assets, irrespective of the form of the legal transaction; commitment to refrain from performance of an action or to tolerate an action or a situation; provision of services in compliance with an order of a public authority or entity acting on its behalf or a requirement arising from the law.

The action of granting a loan for a fee is an activity falling within the catalogue of activities subject to taxation with VAT as provision of services for a fee but is exempt from value added tax – states Director of the National Tax and Customs Information Office in the ruling of 31 August 2022 (ref. no. 0111-KDIB3-1.4012.414.2022.4.WN).



### III. A service requires that considerations are mutual

Every consideration that is not a supply of goods, consisting in an action, inaction or tolerance of one's conduct is, in principle, a service within the meaning of the Act on Value Added Tax. Nevertheless, the following conditions must be met for that purpose: as a result of the commitment in performance of which the service is provided, the other party (buyer) becomes the direct beneficiary of the consideration and the service entails a mutual consideration from the buyer (a fee). For a consideration to be deemed a consideration for a fee, a legal relationship must exist between the service provider and recipient and a fee must be paid for the provided service. There must be a direct relation between the provided service and fee paid for it. This means that the legal relationship under which the service is provided must give rise to an express direct benefit for the party providing the service.

### IV. For VAT taxation to occur, the goods and services must be sold by a taxpayer

Not every activity being a supply of goods or provision of services is subject to VAT taxation. For the given activity to be subject to taxation with this tax, it has to be performed by a taxpayer. Taxpayers are legal persons, organisational units without legal personality and natural persons conducting an independent business activity, irrespective of the purpose or result of such an activity. Supply of goods or provision of services is subject to taxation with value added tax if it is performed by an entity having the status of a taxpayer and, additionally, acting in that capacity in the given transaction. In order to state that in relation to the given supply of goods or provision of services we are dealing with a VAT taxpayer, it is essential that the taxpayer conducts a business activity.

### V. The definition of the loan is provided for in the Civil Code

The loan contract is defined in Article 720 of the Civil Code. Thereunder, under a loan contract, the lender commits to transfer to the borrower the ownership of a specific amount of money or quantity of fungibles, and the borrower commits to return the same amount of money or the same quantity of fungibles of the same quality. As a result of fulfilment of the consideration by the party granting the loan, specific assets become the ownership of the borrower. They become the borrower's property only temporarily, though, and the borrower is obliged to return the loan, i.e. transfer the same amount of money or fungibles of the same type back to the other party.



## VI. An interest-bearing loan granted by a VAT taxpayer is a service

Activities consisting in granting of interest-bearing monetary loans are a provision of services for a fee and are subject to taxation with value added tax. Granting of loans by a taxpayer of the value added tax satisfies the criteria for considering such activities as subject to taxation, irrespective of the frequency and purpose of granting them or the status of the party receiving them. Granting of loans by an entity conducting a business activity, in connection with conducting it, can be identified and classified as falling within the professional area of the entity and, thus, considered as giving rise to obligations in terms of value added tax, even if such activities do not fall within its scope of objects of operation.



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## VII. Despite being subject to VAT taxation, no tax is paid on the loan

Under Article 43(1)(38) of the Act on VAT, the services of granting of monetary credits or loans and the services of agency in provision of services consisting in granting of monetary credits or loans as well as monetary credit or loan management by the lender or borrower are exempt from tax. Thus, the action of granting a loan for a fee is an activity falling within the catalogue of activities subject to taxation with VAT as provision of services for a fee but, since these services fall within the scope of activities referred to in Article 43(1)(38) as specified directly in that provision - the service of granting a loan is exempt from value added tax.

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