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Explanations of VAT group regulations published

I. Tax authorities have published the final version of VAT group explanations

The Ministry of Finance has published tax explanations on VAT groups (VG). The purpose is to present a practical interpretation of the provisions of the VAT Act insofar as they make it possible for several entities to report jointly as part of so-called VAT groups. The tax explanations clarify regulations that will go into effect as of 1 January 2023. They focus on the conditions for the formation of VAT groups, the rules of tax reporting during the group's existence, as well as issues associated with the group's dissolution. Much space has also been devoted to the rights and obligations associated with transition periods.

II. Ministry of Finance has added new topics to the explanations

The new explanations had been widely consulted prior to publication. We discussed the initial draft extensively in one of the August issues of BDO's tax alert. Since then the tax explanations on VAT groups have been broadened by such matters as: additional explanations on the conditions of ties within a VG including the matter of continuity of ties; simplified import procedure; additional explanations of issues relating to foreign entity branches, including examples of transactions between a branch of a foreign entity that jointed a VG and the entity's head office or branch in another country; matters associated with concluding a VG agreement in electronic form; the topic of factor and pre-pro rata factor where a former group member performed activities solely for the benefit of members of the VAT group. As a result, instead of the original 43, the new explanations have as many as 63 pages.

The Ministry of Finance has published tax explanations on VAT groups. Compared t o the draft, the published version has been expanded from 43 to 63 pages, which means that numerous additional explanations have been added as a direct response to concerns submitted by taxable persons at the consultation stage. One of the topics discussed in the explanations is how VAT groups are to account for vehicle expenses.

III. Formation of VAT groups possible as of 1 January 2023 by concluding an agreement

To recap, 1 January 2023 is to be the effective date of the regulations on VAT groups (VG) introduced under the Polish Deal. A VG may be described as a legal form of acting together for the purposes of VAT. As a special type of taxable person, a VG exists only for the purposes of VAT. Although each member of the group retains its distinctiveness and legal status, the formation of a VAT group is given primary significance (under the VAT Act) over legal forms provided for in, for example, civil or corporate law. Any taxable person can potentially become a member of a VAT group. The new structure does not limit the ability to form a group to specific organizational forms by adopting the broadest formula in this respect. It also needs to be stressed that the formation of a VG is voluntary, allowing traders to independently decide if they want to apply the solution. Importantly, where a VG is joined by a domestic entity that has a foreign branch, that foreign branch will not be part of the group. This is because there is a rule that a VG may be formed by taxable persons insofar as they have their registered office in the territory of Poland, as well as taxable persons without their registered office in the territory of Poland insofar as they conduct business operations in the territory of Poland through a branch located in the territory of Poland.

IV. Ministry has explained how to apply company vehicle regulations as part of a VAT group

A separate section of the explanations is devoted to accounting for vehicle expenses. They indicate that where a VG member incurs expenses associated with vehicles used for both business and other purposes (other than private purposes): the amount resulting from the invoice, customs clearance document, import declaration or other decisions issued by the head of the customs office, or the amount of output tax on an intra-Community acquisition of goods, import of goods, covered by simplified procedure, arising out of a customs clearance document, import or supply of services where the taxable persons is the buyer, should be reduced in accordance with the pre-pro rata factor applied by the VG group member that uses the vehicle. Where the vehicle will also be used for private purposes, the input VAT calculated using the pre-pro rata factor should be reduced by 50%. Where the vehicle will only be used for business purposes (and all of the requirements of the VAT Act are met), the amount of input tax calculated using the pre-pro rata factor will not be reduced.

V. Group must continue to apply limited tax deduction rules

If the vehicle expenses are related to taxable and tax-exempt activities performed by a given member of the VG, the amount should be further pro-rated in accordance with the factor (proportion) calculated for the VG member using the vehicles, based on Article 90 par. 3-10 and par. 10c-10g of the VAT Act. These provisions define the rules for the application of the so-called partial tax deduction proportion. The proportion is determined as a share of annual turnover from activities eligible for an output tax deduction in the total turnover from activities eligible for an output tax deduction, as well as activities not eligible for such a deduction. For expenses associated with motor vehicles, the rules for adjusting such expenses set forth in Article 90b of the VAT Act (adjustment of input tax associated with motor vehicles) will also apply accordingly.

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VI. VAT-26 validity explained

The explanations indicate that the group retains the rights associated with form VAT-26 filed by its member throughout the group's existence. VAT-26 filed by a member of the group before the group's formation remains valid after the group is formed. Where the use of a motor vehicle changes during the group's existence, the group is required to update its VAT-26 information no later than by the end of the month in which the change occurred. Where a VAT-26 is filed by the VG, e.g. in connection with the purchase of a vehicle by one of its members, and then the VG is dissolved, the then-former group member will need to file a new VAT-26 to continue the full deduction of VAT on expenses associated with the vehicle.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.