

The Settlement of the Goods and Services Tax with Reference to Irrecoverable Debts

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The regulations concerning the VAT settlements with reference to irrecoverable claims were introduced in Poland on the grounds of the act issued on 21st April 2004, which changed the act of the goods and services tax in force since 1st June 2005. Until then the Polish tax system concerning VAT regulations that can be applied in the area of the correction connected with the lack of the settlement of claims were not been known. This situation is beneficial for the creditor, and for the debtor it means the necessity to increase the tax obligations. The constructions of the correction are regulated so that when the creditor introduces the correction decreasing the tax obligation, the debtor will be obliged to increase his tax obligation. The justness of the above regulations is clear when it is indicated that they increase the sense of tax justice and they annul the tax obligation in the cases of failed civil law transactions.

1. The Settlement of the Goods and Services Tax with Reference to Irrecoverable Debts

The construction of the goods and services tax in the area of formation of the tax-paying liability assumes that the tax-paying liability according to the article 19 item 1 and 4 of the act of goods and services tax passed on 11th March 2004¹ is imposed the moment the goods are delivered or the service is performed. There exists a sharp deviation from the above general rule in the range of the actions regarding to which the legislator imposes the obligation of documenting the transaction with a VAT invoice. If the delivery of the goods or the performance of the service should be documented with an invoice, the tax-paying liability is imposed the moment the invoice is issued, but not later than within seven days since the goods are given or the service is performed. In this situation the imposition of the tax-paying liability as regulated by the act is performed at the moment of the delivery of the goods or performing the service no later than within seven days since the day the

¹ The act of goods and services tax passed on 11th March, 2004. (Journal of Law, No 54. Item 535 with changes).

operations mentioned take place. The imposition of the tax-paying liability concerning the goods and services tax is synchronised with the regulations concerning the regulations indicating the moment the revenue is produced like the income tax indicates, both on natural and judicial persons.

According to the article 14 item 1 of the act issued on 16th July 1991 on the income tax on natural persons² and article 12 items 1 of the act issued on 15th February 1992 on the income tax on judicial persons³ the revenue means amounts due, even when not received yet. Also, according to the acts above, the moment the revenue is produced is the day the invoice (the bill) is issued, but no later than the last day of the month in which the goods were delivered or services performed. For this reason, the production of revenue in the income taxes and the imposition of the tax-paying liability in the VAT appear regardless of the due cash values when goods are delivered or services are performed.

² The act of the income tax on natural persons passed on 26th July, 1991 (Journal of Law. 2000. No 14. Item 176 with changes).

³ The act of the income tax on judicial persons passed on 15th February, 1992 (Journal of Law. 2000. No 54. Item 654 with changes).

Such tax law regulations put the taxpayer in a difficult economic situation. Not only hasn't the taxpayer received the amount due, but also he has to meet the tax obligations. In the range of the goods and services tax after the delivery transactions performed the taxpayer is obliged to pay the tax due. In the case of the income taxes the transactions mentioned above are considered to influence the amount of revenue and thus the amount of the income tax.

2. The VAT Correction Regarding an Irrecoverable Claim

The goods and services tax bearer can correct the tax levied on the delivery of goods or performing services in the national territory in the case of an irrecoverable claim which are the costs of the gaining of revenue specified by the rules concerning the income taxes. The VAT correction concerns the amount of the tax on the part of the amount of the claim considered irrecoverable. The income taxes regulate that every irrecoverable claim constitutes the costs of gaining of revenue in the cases clearly defined by the law. The cost of revenue gaining include the claim considered irrecoverable which was earlier credited as income due and whose irrecoverability has been made plausible. The irrecoverability of a given claim is made plausible in the cases when the irrecoverability has been documented with:

1. the decision of irrecoverability issued by the appropriate execution procedure authority
2. the court decision concerning:
 - a. dismissal of a motion for declaration of bankruptcy
 - b. discontinuance of bankruptcy proceedings
 - c. end of bankruptcy proceedings
3. a protocol made by a taxpayer stating that the predictable court fees and the costs of

Execution connected with the vindication of a claim would be equal to or higher than the claim.

Also an irrecoverable claim can be credited in the revenue gaining costs if an updating write-off, specified in the act of accounting⁴, is made from the part of the claim which was beforehand included in the income due and its irrecoverability has been made plausible. The irrecoverability of a claim is considered plausible when:

⁴ The act of accounting issued on 29th September, 1994 (Journal of Law. 2002. No 76. Item 591 with changes).

1. the debtor has been cancelled from the records of economic activity, is put in the state of liquidation or his bankruptcy has been declared, or

2. when bankruptcy proceedings have been initiated with the possibility to negotiate agreement according to the bankruptcy regulations and or on a petition moved by the debtor composition proceedings have been initiated according to the regulations of the financial restructuring of enterprises and banks, or

3. when the claim has been awarded with a valid court decision and concerning it execution procedure has been initiated

4. The claim is called in question by the debtor by means of a lawsuit.

The correction of the VAT regarding an irrecoverable claim can be made only when the following conditions are met:

1. the goods are delivered or service performed for a taxpayer registered as an active VAT payer, not in the course of bankruptcy proceedings or liquidation;

2. the claim was beforehand showed in the tax declaration as taxed turnover and tax due

3. the creditor and the debtor on the day of the correction are registered as VAT payers active;

4. the claim has not been paid in any form possible or alienated

5. it is not five years since the invoice which is the basis for writing off the claim, counting since the beginning of the year in which the invoice was issued;

6. The creditor has informed the debtor about the writing off the claim as irrecoverable and the debtor within twenty eight days since the day on which the notification was received has not paid in any form possible.

The correction of the tax due can be made in the settlement after the clearing of accounts period following the month in which the debtor received the notification mentioned above. It means that for instance a claim from July 2005 can be included in the costs of gaining revenue, unless on the basis of the regulations concerning income taxes it will be possible to include it in the costs of gaining revenue. Practically, the time limit seems long. It often happens that the above takes place after the period of time longer than a year. In the example presented it will be July 2006. The creditor, fully aware of appropriate regulations concerning including a given claim in the costs of gaining revenue and writing it off, notifies the debtor and waits for twenty eight

days for his adequate reaction.

In the situation when the claim is not paid within the indicated twenty eight days since the date of the notification, the creditor introduces a correction in the period of time following the end of the indicated twenty eight days. For instance August 2006 will be the month following the sending of the notification (twenty eight days of the given time period). The correction will be introduced in the following month that is in September 2006. In this case the correction will be settled in the September 2006 declaration made till 25th October 2006.

If the claim is paid in any possible form after his correction was introduced, the taxpayer is obliged to increase the output tax in the settlement after the period in which the claim was paid. In the case of a partial settlement, the output tax increases with reference to this part.

In the situations when claims are settled after the corrections are introduced the increase of the output tax will be repeated. The increase will be indicated in the current declaration increasing tax obligations. Making the tax declaration including the correction of the tax due the taxpayer is obliged to inform the appropriate revenue office about the correction and the amounts of the correction of the tax due. The notification concerning the correction indicates that the creditor and the debtor have not regulated the civil law claims. Moreover, the taxpayer who is the creditor is obliged to notify the debtor about the corrections of the tax due within seven days since the day when the correction was introduced. A copy of the notification is sent to the appropriate for the taxpayer revenue office. In this way the tax authority takes cognizance of the necessity to introduce a correction reducing the input tax thus reducing the debtor's tax duty.

The regulations concerning the correction of the VAT described above are not applied when between the creditor and the debtor there exists a relation based on family, economic, or capital connections. It means that in the case when between the taxpayers conducting a transaction there exist economic, family or capital connections, and the debtor will not settle the claim, the creditor will not be able to correct the VAT duties.

3. The Correction of the Input Tax for the Debtor

In the case when the debtor is informed by the creditor about the writing off of the claim as irrecoverable and he does not settle the claim

within the twenty eight days after receiving the notification, the taxpayer (the debtor) is obliged to reduce the input tax which is written off. When there is no input tax necessary to be reduced, the taxpayer (the debtor) will be obliged to increase the amount of the tax due by the amount of the tax resulting from the unsettled invoices. The above regulations reducing or increasing the input tax or tax due are applied by the taxpayer by means of correcting the declaration referring to the period in which he performed the deduction or in which he received the invoices. The correction should be introduced in the current declaration.

If the debtor only partly settles the claim before the end of the time limit specified in the act, that is twenty eight days since the receiving of the notification from the creditor, the correction concerns the input tax on the unsettled part of the claim. It means that the correction will concern only the part of the VAT not relating to the settled claim. Different regulations concerning the responsibility of the third parties for tax arrears are applied in the case of tax arrears resulting from the correction of input tax. The area of responsibility with respect to third parties is regulated by the act issued on 29th August 1997.

The Fiscal Law⁵ concerning the responsibility of a spouse, a member of family of a partner in a private company and the area of responsibility of laws and duties connected with his transformation of subjects and legal successors. If the debtor introducing the correction of the input tax settled his payments for the goods purchased or service performed, the taxpayer (the debtor) has the right to increase the amount of the input tax in the settlement for the period in which the payment was settled. When the debtor only partly settles the payment for his civil obligations, the input tax can be increased in relation to this part. In the area of the legal grounds relating to effective notification of the debtor about the writing off the claim mentioned above, the regulations of the articles 144 – 154 of the Fiscal Law⁶. The detailed regulations indicated there refer to the way the delivery is performed and its effectiveness.

4. Recapitulating

The regulations concerning the VAT settle-

⁵ The act issued on 29th August 1997 / The Fiscal Law (Journal of Law. 2005. No 8. Item 60 with changes).

⁶ Ibid.

ments with reference to irrecoverable claims were introduced in Poland on the grounds of the act issued on 21st April 2004, which changed the act of the goods and services tax⁷ in force since 1st June 2005. Until then the Polish tax system concerning VAT regulations that can be applied in the area of the correction connected with the lack of the settlement of claims were not been known. This situation is beneficial for the creditor, and for the debtor it means the necessity to increase the tax obligations. The constructions of the correction are regulated so that when the creditor introduces the correction decreasing the tax obligation, the debtor will be obliged to increase his tax obligation. The justness of the above regulations is clear when it is indicated that they increase the sense of tax justice and they annul the tax obligation in the cases of failed civil law transactions.

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Susitarimas dėl prekių ir paslaugų mokesčių paverčiant nesugražinamomis skolomis

Santrauka

Straipsnyje nagrinėjami nesugražinamas skolas liečiantys Lenkijos teisės aktai, pakeisti 2004 m. balandžio 21 d. įstatymu ir įsigalioję nuo 2005 m. birželio 1 d. Iki to laiko Lenkijos mokesčių sistema nereguliuoja nesugražinamų skolų. Tokia situacija buvo ypač naudinga kreditoriams bei skolininkams ir reiškė mokestinių įsipareigojimų padidinimą. Įsigaliojus minėtiems teisės aktams, šie susitarimai sureguliuoja tokius kreditorių veiksmus kaip mokestinių įsipareigojimų mažinimą, o skolininkams tai reiškė jų mokestinių įsipareigojimų padidinimą. Teisės aktai teisėti, kai jie didina mokesčių teisingumą ir panaikina nepavykusius mokestinius įsipareigojimus civilinės teisės sandoriuose.

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Literature

1. The act of goods and services tax passed on 11th March, 2004. (*Journal of Law*, number 54, item 535 with changes).
2. The act of the income tax on natural persons passed on 26th July, 1991 (*Journal of Law* from 2000, number 14, item 176 with changes).
3. The act of the income tax on judicial persons passed on 15th February, 1992 (*Journal of Law* from 2000, number 54, item 654 with changes).
4. The act of accounting issued on 29th September, 1994 (*Journal of Law* from 2002, number 76, item 591 with changes).
5. The act issued on 29th August 1997 the Fiscal Law (*Journal of Law* from 2005, number, item).
6. The act issued on 21st April 2005 about the changing of the act on the goods and services tax and changing of some other acts (*Journal of Law* number 90, item 756).

⁷ The act issued on 21st April 2005 about the changing of the act on the goods and services tax and changing of some other acts (*Journal of Law*. No 90. Item 756).