

RSM – the global destination for your audit, tax and consulting needs.



VAT on services connected with immovable property – the long-awaited clarification of rules

Tax Alert

Dear Readers,

On 1 January 2017, the next part of Council Implementing Regulation (EU) No. 1042/2013, an amendment to Regulation 282/2011, will come into force, establishing, among others, VAT rules regarding the place of supply of services connected with immovable property. The previous rules, basically incorporated 1:1 into Polish regulations in Article 28e of the Act on value added tax, left too much freedom for interpretation and raised numerous doubts. An attempt was made to clarify them through case law (such as judgement of the EU Court of Justice in case C-155/12 of 27 June 2013), but there are so many different situations in everyday business that many question still remained open.

The new EU regulations, entering into force in less than 3.5 months, apply directly in each EU Member State without the need for separate implementation and they regulate two issues:

1. they introduce an autonomous EU definition of immovable property for the purposes of the application of VAT regulations throughout the European Union, and
2. they specify a non-exhaustive list of examples of services identified as connected with immovable property as well as those that do not demonstrate the connection.

The two above elements are essential because on the basis of both Article 47 of Directive 2006/112/EC and the said Article 28e, **services considered to be connected with immovable property are taxed in the Member State where the property is located**. It is not, therefore, possible to apply the general rule which states that the services for commercial customers are generally taxed in the country in which the customer is established.

In line with Regulation 1042/2013, from 1 January 2017, the following will be regarded as “immovable property”:

- a) any specific part of the earth, on or below its surface, over which title and possession can be created,
- b) any building or construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved,
- c) any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts,
- d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.

Services connected with immovable property, as defined above, will include only those services that:

- a) have a sufficiently direct connection with that property, and that property makes up a constituent element of the service and is central to,
- b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

Sample services meeting the said criteria will include:

- the drawing up of plans for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected,
- the provision of on site supervision or security services,
- the construction of a building on land, as well as construction and demolition work performed on a building or parts of a building,
- the construction of permanent structures on land, as well as construction and demolition work performed on permanent structures such as pipeline systems for gas, water, sewerage and the like,
- the valuation of immovable property, including where such service is needed for insurance purposes, to determine the value of a property as collateral for a loan or to assess risk and damages in disputes,
- the leasing or letting of immovable property (other than thus provided advertising services), including the storage of goods for which a specific part of the property is **assigned for the exclusive use of the customer**,
- the installation or assembly of machines or equipment which, upon installation or assembly, qualify as immovable property,
- legal services relating to the transfer of a title to immovable property, to the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), such as notary work, or to the drawing up of a contract to sell or acquire immovable property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.

Under the new regulations, the service **will not** be regarded as connected with immovable property where they refer to:

- the drawing up of plans for a building or parts of a building if not designated for a particular plot of land,
- the storage of goods in an immovable property if no specific part of the immovable property is assigned for the exclusive use of the customer,
- the provision of advertising, even if it involves the use of immovable property,
- the installation or assembly, the maintenance and repair, the inspection or the supervision of machines or equipment which is not, or does not become, part of the immovable property.

In addition, the leasing or letting of entire sets of machines for construction purposes has been clarified – in practice such situations caused a lot of controversy. According to new Article 31b inserted in Regulation 282/2011: Where equipment is put at the disposal of a customer with a view to carrying out work on immovable property, that transaction shall only be a supply of services connected with immovable property **if the supplier assumes responsibility for the execution of the work**. A supplier who provides the customer with equipment **together with sufficient staff for its operation** with a view to carrying out work shall be presumed to have assumed responsibility for the execution of that work. The presumption that the supplier has the responsibility for the execution of the work **may be rebutted** by any relevant means in fact or law.

RSM Poland is a member of RSM, the world's 6th largest network of independent advisory and auditing companies, with over 760 offices in more than 120 countries, employing over 38,300 professionals worldwide.

RSM Poland has been operating on the Polish market since 1991. Throughout this time we have gained vast knowledge and experience. We take pride in the unique team of professionals, counting among the best, that we were able to form.

Our company is shaped by our clients, whose requirements always take priority. That is why we offer comprehensive services tailored to meet individual needs. It is our clients who decide about the range of available services, while we give them opportunity for development and growth at every stage of their business.

Years of experience show that our approach is the key to mutual success.





Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

Przemysław POWIERZA

Tax Partner

Tax advisor (11204)

E: przemyslaw.powierza@rsmpland.pl

M: +48 600 335 610

RSM Poland

Droga Dębińska 3b

61-555 Poznań, Poland

www.rsmpland.pl

office@rsmpland.pl

RSM Poland BLOG



Practical guide to taxes and business.

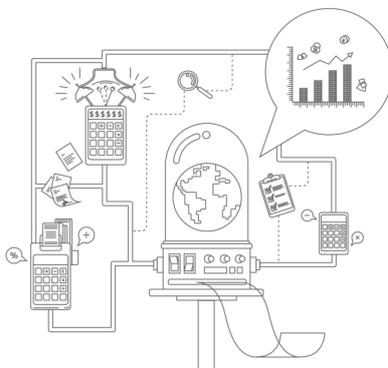
We invite you to read our publication!



Please note that the presented text should not be understood as legal advice, as each individual case requires a separate, thorough analysis. Henceforth, RSM Poland Spółka Doradztwa Podatkowego S.A. and RSM Poland Audyt S.A. assume no liability in connection with use of information, advice and suggestions included in this publication.

© RSM Poland, 2016

27.09.2016



THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING

RSM Poland is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm which practices in its own right. The RSM network is not itself a separate legal entity in any jurisdiction.

