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## Deduction of VAT on construction services

### Tax Alert

Dear Readers,

**The correct determination of the inception of the right to deduct VAT on the services covered by the reverse charge upon receipt of an outstanding invoice from a subcontractor, is an important issue in the construction industry. The mechanism of reverse charge of VAT for services listed in Annex 14 to the VAT Act raises further doubts of taxpayers. This time, the issue concerns the determination of the inception of the right to deduct VAT for the General Contractor when he has received an invoice from a subcontractor with a delay of more than three months. It should be considered whether this right arises on general principles, i.e. not earlier than upon receipt of an invoice from a subcontractor, or at the time the tax obligation arises.**

Let me remind you that from 1 January 2017, a new provision of Article 17 Section 1h of the VAT Act has been in force, according to which the reverse charge rules apply to construction services listed in Annex 14 to the Act if the service provider is providing those services as a subcontractor. Therefore, the General Contractor's obligation is to settle the tax due and accrued if he has received an invoice without VAT from a subcontractor. The issue is when the General Contractor should specify the inception of the right to make the deduction if a subcontractor provides the invoice several months after the completion of the service.

In such a situation, we should refer to Article 86 Section 10 of the VAT Act, according to which the right to deduct tax accrued, with respect to the goods and services acquired or imported by the taxpayer, arises in the settlement for the period in which the tax liability has arisen. However, according to Article 86 Section 10b Item 3 of the VAT Act, the right to deduct tax accrued arises provided that the taxpayer takes into account the amount of tax payable in respect of these transactions in the income statement in which the taxpayer is obliged to settle the tax, not later than 3 months after the end of the month in which tax liability related to the goods or services acquired arose. This standard does not mention at all the time of the invoice receipt, and thus, in our opinion, the right to deduct arises at the moment of the service performance. As a consequence, the General Contractor will have only three months to obtain and include in the statement the invoice from a subcontractor to make the transaction settled as VAT tax neutral. In case of exceeding the said period, the taxpayer will have to account for the VAT due at the time the tax liability has arisen, and accrued at a later date.

For example: A General Contractor receiving an invoice two months after performing the service will be able to account for VAT due and accrued by making a correction to the statement. In such case, the transaction will be tax neutral. In case the invoice is received in the fourth month or later, the General Contractor shall settle the VAT due in the month in which the tax obligation has arisen (with interest on arrears), and shall settle the VAT accrued at a later date (in the month of the invoice receipt).

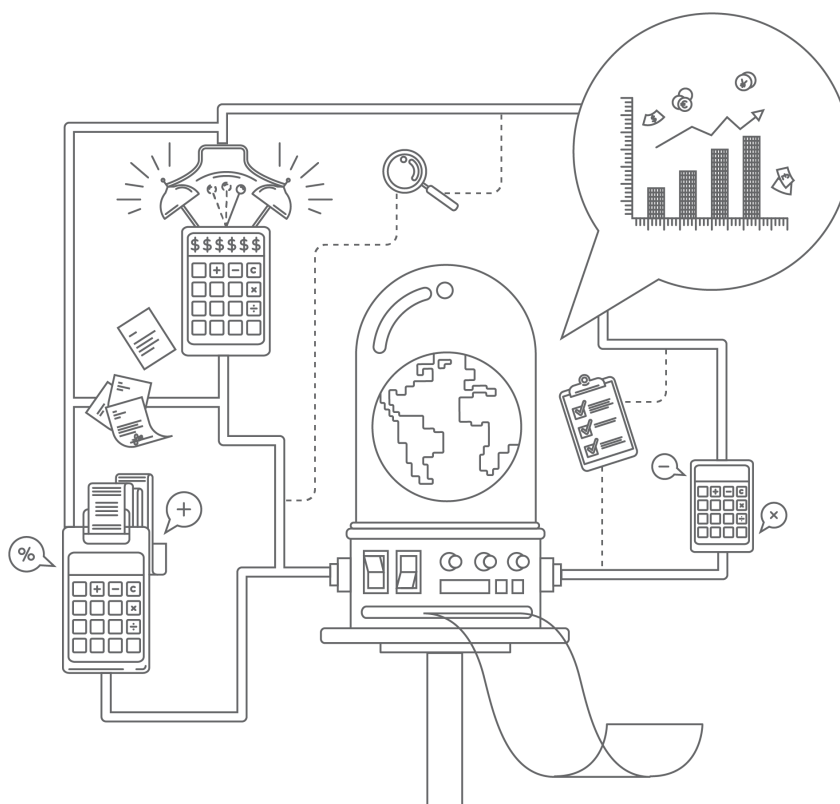
In the end, we would like to point out to the problem of defining the moment of performing a service in the construction industry. The decisions of administrative courts indicate that the date of signing the handover report is not equivalent to the date of the service implementation.

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

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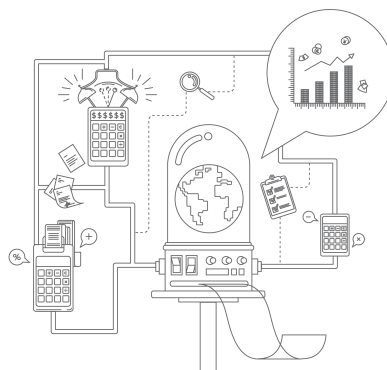
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