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Exemptions from the obligation of registering turnover in a cash register for the year 2017

Tax Alert

Dear Readers,

New draft regulation on the exemptions from the obligation of keeping records using cash registers of 21 September 2016 (hereinafter: the "Regulation") does not provide for the introduction of new exemptions or liquidation of the previously effective ones. The only exception is the new exemption for the sale of air transport tickets and meals and supply of goods on the board of aircraft. However, the Regulation introduces significant changes, which we would like to draw your attention to in this Tax Alert.

The Minister of Development and Finance in the Regulation will introduce new conditions for benefiting from the exemption for the supply of goods or provision of services referred to in items 38 and 39 of the Appendix to the Regulation (hereinafter: the "Appendix"). The wording of the Appendix items in question is as follows:

- Item 38 – the delivery of goods in the shipping system (by post or delivery by courier), if the seller of the goods receives a total payment for an action performed by mail, bank or a savings and credit union (to the bank account of the taxpayer or to the taxpayer's account in a savings and credit union which the taxpayer is a member of), and the records and evidence documenting the payment clearly indicate what specific action is concerned and for whom it has been performed (data of the buyer, including address);
- Item 39 – the provision of services to individuals not engaged in economic activity and flat-rate farmers if the service provider receives the total payment for an action performed by mail, bank or a savings and credit union (to the bank account of the taxpayer or to the taxpayer's account in a savings and credit union which the taxpayer is a member of), and the records and evidence documenting the payment clearly indicate what specific action is concerned.

However, for the exemption to apply, there is an obligation to authorize a bank established in the territory of a country or a savings and credit union (hereinafter: the "SCU") holding the account to which the payment is made in respect of the transactions exempted from the obligation of registering using cash registers, to provide to the tax authorities or tax inspection authorities information on all transactions made on the account. The authorization should be granted by the taxpayer at least until the end of 2017 and drawn up in two copies, one of which is received by a bank or SCU, and the other is sent to the head of the taxpayer's tax office.

Under the transitional provisions, taxpayers who currently benefit from the exemption for the supply of goods and services paid by a bank transfer **should submit the authorization no later than 31 December 2016.** The authorization should be valid at least until the end of 2017.

Meeting the new requirement will be a precondition for benefiting from the exemption from the obligation to register transactions using cash registers in 2017. According to the justification to the Regulation, the introduction of this solution is to simplify the process of controlling whether entrepreneurs fulfil their tax obligations. However, in our opinion, the new wording of this provision may be too far-reaching. Since the Regulation refers to all transactions made with this account, there is a fear that tax authorities will use the new provision to omit the procedure of obtaining the data subject to fiscal and banking secrecy which is to be transferred to the authority in the manner determined for tax information, on the basis of the precise provisions of the Tax Code.

Another significant change is the extension of the exemption scope in the case of services resold to employees and some medical, legal and tax advice services.

In §4. Section 2 item 1 of the draft Regulation, it is proposed that the provision of services under the terms specified in item 36 of the Appendix to the Regulation, i.e. the sale of services to employees by the taxpayer that acquired the services itself first, shall not be subject to the absolute registration obligation. It means that the purchase and subsequent resale of the service by a taxpayer to the taxpayer's employee shall be entirely exempted from the obligation of registering using cash registers. For example, this may involve the resale to employees of medical care services or food-related services previously purchased by the employer.

Moreover, pursuant to §4. Section 2 item 2 of the Resolution, the absolute obligation of registering shall also not apply to the provision of medical care services provided by doctors and dentists, legal and tax advice services on the terms set out in §2 Section 4 and Item 39 of the Appendix. It refers to the services for which the service provider receives a total payment by mail, bank or SCU (to the bank account of the taxpayer or to the taxpayer's account in a savings and credit union which the taxpayer is a member of), and the records and evidence documenting the payment shall clearly indicate what specific action is concerned. In addition, the condition is that the taxpayer has authorized the bank or SCU to provide to the tax authorities or tax inspection authorities information on all transactions made on the account – that is in the same mode as described above.

The changes in question should be considered as favourable for taxpayers. The previous Regulation of 2014 did not provide for an exemption for the provision of medical care services performed by doctors and dentists, legal services (except for notary services) and tax advice services. The new Regulation, which will come into force on 1 January 2017, provides for the exemption from the obligation of registering using cash registers for the above activities, provided that the payment is made entirely by mail, bank, or SCU, and it arises clearly from the records and evidence documenting the payment which specific action the payment shall concern. At the same time, it is necessary to authorize the bank holding the account to provide the information on **all** transactions made on the account to tax authorities or tax inspection authorities.

As of the date of the preparation of our Tax Alert, the Draft Regulation has undergone the assessment procedure and it is waiting to be referred to the Minister for signing. If you are interested in obtaining information on the impact of the changes discussed on your business, please contact us.

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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

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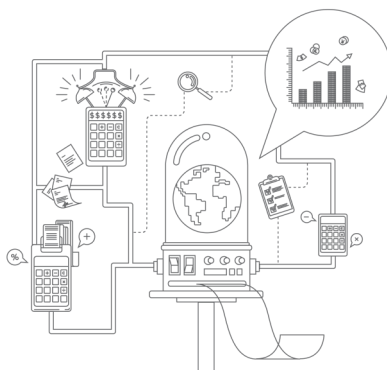
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