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Changes in *reverse charge* from 2017

Tax Alert

Dear Readers,

On 2 December, the Sejm delivered to the President for signature the act adopted the day before, which introduced numerous changes in the tax on goods and services, whose effective date is scheduled for 1 January 2017. They include changes in the application of the *reverse charge* mechanism.

Reverse charge for construction services

The modification covered, inter alia, the provision applicable to the settlement of VAT by the purchaser of services with respect to transferring greenhouse gas emission allowances. According to the current wording of the provision, the entities obliged to apply *reverse charge* shall be the purchasers of services with respect to transferring greenhouse gas emission allowances as well as purchasers of broadly understood construction services. The condition for the application of the *reverse charge* is that the service provider shall be a payer of tax on goods and services (except for taxpayers persons benefiting from tax exemption), and the customer is a payer of tax on goods and services registered as a non-exempt (so-called active) VAT payer.

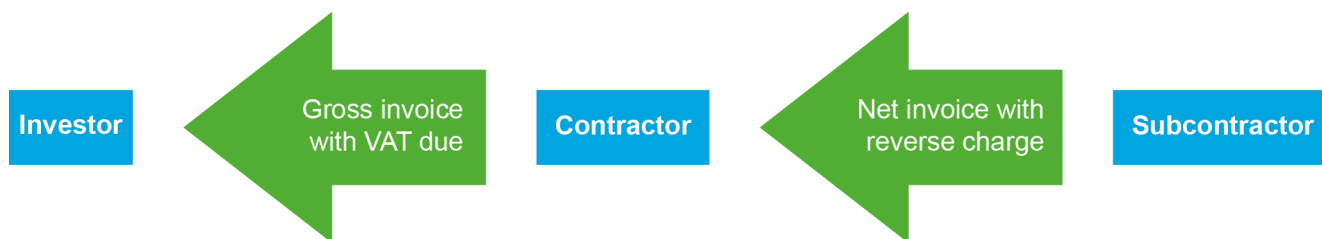
Services to which the above mechanism will apply are specified in detail in Annex No. 14 to the Act. They may be divided into the following groups:

- construction works related to the erection of buildings;
- works related to the construction of roads and bridges;
- works related to the construction of pipelines, water supply pipelines, transmission lines, power stations;
- works related to the execution of any installations;
- works related to the finishing of buildings.

The obligation to apply the *reverse charge* mechanism will be applicable in the situation when the service provider provides the services as a **subcontractor**.

However, the Act fails to define the term "subcontractor", which will probably result in numerous interpretative doubts. Theoretically, in case of absence of a statutory definition, its linguistic meaning should be used. According to it, a subcontractor is an entity performing work for the main contractor. Nevertheless, economic life is a bit more complicated. Thus, situations where specific services will be purchased from a contractor and, subsequently, re-invoiced to the entity that is the actual recipient of the service may be problematic. It is unclear whether in such case the contractor may be also recognised by tax authorities as a "subcontractor", as referred to in the provisions of the Act. It is also unclear whether the change will affect the settlement of a consortia or eligible costs in public contracts.

An exemplary settlement in case of the provision of construction services by a subcontractor is presented in the following graph.



Jewellery buyer will settle the VAT due

As a result of the supplementation of Annex No. 11 to the Act, the mechanism of *reverse charge* covers also such goods as: silver, gold (other than investment), platinum (unwrought, in the form of a semi-finished product or powder), base metals, non-ferrous metals and their products and jewellery. As a result, if the entity supplying the goods listed above is a payer of tax on goods and services (not subject to the tax exemption), and the buyer is a taxpayer registered as an active VAT payer, and the delivery itself is not subject to exemption, the purchaser will be obliged to settle the tax.

Delivery of processors with a limit

The Reverse charge will also cover the delivery of processors made within a single economic transaction exceeding the amount of PLN 20,000.00. A single economic transaction is regarded as a transaction made under one contract, even if more than one delivery is performed, based on separate orders documented with a larger number of invoices. Taxpayers will be obliged to monitor the value of deliveries of processors and to apply *reverse charge* when the conditions are met.

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

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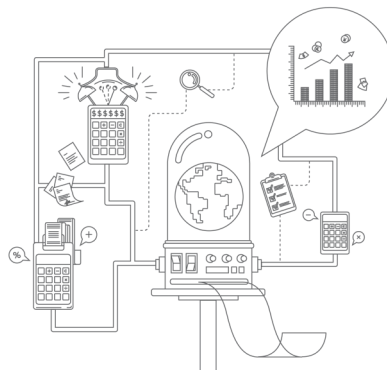
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