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Operation payment cards with VAT

Tax Alert

Dear Readers,

The technical services executed by the payment card provider for the bank are subject to VAT – according to a recent judgement of the Supreme Administrative Court of 20 January 2017 (File Ref. No. Act I FSK 1002/15).

Financial services, such as maintaining bank accounts and handling payment transactions, are exempted under the VAT Act. To provide financial services banks use, among other things, payment cards. However, banks often outsource servicing payment cards to other entities. This may be done for a number of reasons, e.g. lack of proper know-how, lack of technical support and optimisation of operating costs. Thus, the question arises which technical activities related to the production or servicing of payment cards are exempt from VAT?

To date, case law in the field of payment cards was favourable to banks, for example judgement III SA/Wa 447/13, I FSK 1489/13 and I FSK 339/12. The case law of administrative courts indicated that technical activities are typical of and necessary for the performance of payment transactions. Therefore, they are also exempt from tax under Art. 43(1) sub-paragraph 40 in conjunction with Art. 43(13) of the VAT Act. This is all the more important since the range of technical services provided to banks has been continually expanded.

This time the Court of Cassation found that such technical activities as preparing accounting reports, which are designed to allow the proper processing, authorisation and settlement of card transactions, or transferring files with data concerning financial operations are not part of the payment transaction service. The ruling divides technical activities into those exempt from VAT and those subject to VAT. That judgement would be problematic to apply because it is difficult to precisely determine which technical activities are related to handling money transfers and payment transactions. Taking into account the development of technologies used to provide financial services, the classification of such services would be even more difficult.

Art. 43(13) of the VAT Act, which served as the basis for the above-mentioned judgment, is only valid until 30 June 2017. This does not mean, however, that as of July 1 the said decision proves to be irrelevant. Since 1 July 2017 services will be exempted only to the extent that they are part of the principal service that is exempt from VAT under Art. 43(1). That judgement should be taken into account when analysing the relationship between auxiliary activities and the main transaction that is exempt from VAT. Activities of a purely technical nature, which are not specific to an exempt service, will have to be separated from the entire transaction for the purposes of VAT.



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

Piotr LISS

Tax Partner

Tax advisor (10240)

E: piotr.liss@rsmpland.pl

M: + 48 696 488 369

RSM Poland

Droga Dębińska 3b
61-555 Poznań, Poland

www.rsmpland.pl

office@rsmpland.pl

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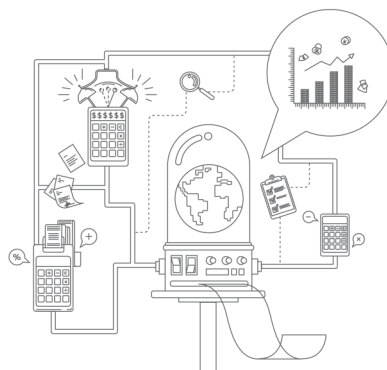
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