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| Civil law activities tax in Poland

Description

Transactions made by entities carrying out business activity in Poland are, in most cases, taxed with Polish VAT since this is applied to most goods and services. However, certain transactions may be subject to another tax which is called Civil Law Activities Tax ("CLAT"). Unlike VAT, CLAT is an example of a direct tax collected from legal persons or individuals on which it is imposed. CLAT is regulated by the Act of 9 September 2000 on Civil Law Transactions Tax.

Scope of taxation

The most common transactions or agreements subject to CLAT in Poland are:

- sale and exchange of goods (sale of movables of a value under PLN 1 000 PLN is CLAT-exempt);
- sale and exchange of property rights;
- establishment of companies (granting funds), share capital increases and so-called "additional payments" contributed to the supplementary capital;
- loans.

Also those changes to the above mentioned agreements (transactions) which result in increasing the taxable base are subject to CLAT.

CLAT- basic information

The base for CLAT calculation is the transaction value of goods or property rights. In case of establishing a company the CLAT base equals the value of initial capital or contribution whilst for a loan it is simply its amount.

CLAT rates depend on the type of a transaction. In almost all cases it is percentage rate on the CLAT base. For example: loans are principally subject to 2% rate (0% rate applies to loans granted by shareholders). The same 2% burden is levied on the sale of movable and immovable property, property rights are taxed with 1% or 2%, whilst establishment of a company is taxed with 0,5% of the funds transferred to the company.

CLAT versus VAT

CLAT is paid generally by the recipient of goods or services (e.g. buyer of a car, purchaser of shares, the company receiving capital injection). CLAT is paid to the tax authorities within 14 days from the first of the following events: conclusion of the agreement or transfer of funds. There is a separate tax form for CLAT payments that must be filled and submitted to the tax office (unless CLAT is withheld and paid by a notary in case of transactions in a form of a notary act).

Generally, CLAT is applied to miscellaneous transactions of entities without the status of a Polish VAT-payer not running the professional activities in Poland (for details how to deal with Polish VAT please see the articles: "Taxation in Poland – general rules" and "How to recover VAT paid during the investment phase?").

In brief, under Polish regulations some transactions can be either subject to VAT (for business) or to CLAT (non-business). What is interesting, even if the transaction is within a scope of VAT but actually VAT-exempt (e.g. financial, health, social and cultural services, sale of companies and the rental of apartments for non-business purposes) CLAT does not apply. Consequently, such VAT-exempt transactions are not subject to any transactional tax in Poland. Nevertheless, such advantageous situation does not apply to explicitly listed transactions, such as: sale of property, establishing company or sale of shares, which although VAT-exempt fall under CLAT.

The distinction between these two transactional taxes is important. This is because VAT is principally "neutral" whilst CLAT is a cost of business activity. Entities registered for VAT in Poland have a right to receive a direct return of input VAT (VAT on purchases). Another option is to "use" input VAT to set off the output VAT (VAT on sales to be paid to the tax office).

On the contrary, CLAT is one-off tax refunded only in a very few cases. Such refund is possible when party (parties) to the transaction failed to have the desired effect (e.g. if the increase of share capital is not registered by the court CLAT can be returned).

Conclusion

Among the other extensive and complex Polish Tax Laws, the CLAT Law is regarded as relatively logical and not too difficult to interpret. However it must be noted that CLAT Law has been subject to numerous changes in the recent years. Just to give an example, between 2004 and 2006 the loans granted by a shareholder to a Polish company were CLAT-exempt. From 1 January 2007 the CLAT Law changed and taxation of shareholder loans was introduced (0,5% rate). As a result of recent amendment of Law effective from 2009, loans granted to a company by its shareholder is CLAT-exempt again.

The above presented example shows that in order to act in compliance with the Polish CLAT Law the taxpayers should ensure that proper care is taken to monitor the relevant regulations which are frequently changed. This conclusion, unfortunately, does not concerns only the CLAT Law but also other Polish Acts on taxes.