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| How to recover VAT paid during the investment phase

General overview

Regardless of the legal form of carrying out a business activity in Poland by non residents (limited liability company, joint-stock company, partnership, etc.) they are obliged, as a rule, to pay the VAT on purchases as, like anywhere else in the EU, the sale of most goods and services is subject to such tax. The basic VAT rate in Poland is 23%, but there are products taxed at lowered rates of 8%, 5% or even 0%.

There are also some explicitly listed goods and services which are VAT exempted under the Polish VAT Law. A good example is the provision of some financial services as well as sale of an enterprise or its organized part. Other most common exemptions from VAT are health, social and cultural services and rental of apartments for non-business purposes.

Moreover, pursuant to the newly introduced amendments (effective 2009), the sale of a building and constructions can be exempted from the VAT provided that the seller was not entitled to deduct the property-related input tax from his output tax (taxpayers are allowed to resign from this exemption). However, as a rule, in the case of a sale of a new or recently improved property, such exemption cannot be applied.

VAT position during the investment phase

Irrespective of the above, a foreign investor registered for VAT in Poland bears significant costs of setting up a business (purchase of property as well as all relevant expenditures including remuneration for consulting, legal, tax&accounting or environmental services). In order to improve the cash flow, he may need to recover the VAT resulting from the said purchases as soon as possible.

Generally, the VAT on purchases (input VAT) can be recovered by being deducted from the sales VAT (output VAT). Then again, for a long time from the start of the investment, the investor may not have a sufficient volume of sales to use all the input VAT. Consequently, the excess of the input VAT over the output VAT must be carried forward against the hypothetical future output VAT.

Fortunately, under the Polish VAT Law, the taxpayer is entitled to receive a **direct return** of the said excess upon request. In order to apply for a VAT refund, the taxpayer must declare so in the VAT return. Principally, VAT returns in Poland are submitted every month although it is also possible to submit quarterly returns. Despite this fact, the calculation and payment of VAT must be performed on a monthly basis.

VAT refund rules

The standard deadline for tax authorities to refund the VAT is **60 days** from the date of filing a tax return, irrespective of the character of the acquisition. In specific situations, that deadline can be accelerated to **25 days**.

If the taxpayer did not perform activities taxable in the territory of Poland (VAT-able sales) during a specific accounting period (month or quarter), he is entitled to receive the return of the excess of input tax over the output tax within **180 days** from the day of submitting the application unless the taxpayer provides a financial security (i.e. a guarantee deposit) to the fiscal office to benefit from the standard 60 days' deadline.

Consequences of VAT refund application

Generally, the tax office is allowed to audit tax returns for the period of the last 5-6 years. But in case of a tax return including an application for a VAT refund, the investor should expect the tax inspectors entering his office before the statutory deadline for a VAT refund. The control is very probable if a substantial amount of VAT to be returned is involved.

Our experience shows that tax inspections scoped on legitimacy and correctness of the VAT refund can be often an unpleasant and stressful encounter. This is because the tax inspectors may examine all VAT-related documentation, not only the VAT registers and VAT invoices (issued in accordance with specified requirements). Taxpayers may have to present trade contracts, bank accounts or other documents proving that certain goods have been actually transferred or certain services provided.

After the tax control, the tax authorities may refuse to return the VAT (fully or partially) commencing formal tax proceedings. Some errors or mistakes regarding VAT compliance can also be penalized based on the provisions of the Polish Fiscal Penal Code.

Conclusion

Although the procedure of a VAT recovery is not too formal and complicated, under the Polish complex and sometimes vague regulations it is impossible to be certain about a positive result of a post-application tax control in almost all cases. However, a proper amount of time spent and care taken by the investor in terms of the local tax and accounting compliance may eliminate or at least mitigate the abovementioned risk.

Another way of mitigation said risk is using the possibility of correcting the tax return with an application for a VAT refund after the inspection (focused on the correctness of the taxpayer's VAT compliance) is completed by the tax office. It means that if the investor agrees with the tax authority's post-inspection conclusion, he may comply with that conclusion by submitting the corrected monthly VAT return. That minimizes the potential negative consequences of penalties introduced by the Polish Fiscal Penal Code.

With applications for significant VAT refunds it is always advisable to work with the local law, tax and audit firms.

It is also worth noticing that the investors' position is much better now than it was before 2009 when tax authorities were able to penalize them if it was found that they overstated the VAT to be refunded (the penalty was calculated as 30% of such overstated amount).