



## VAT Act modified as of 1 January 2010

As a necessity of Hungary's accession to the European Union, the country's act on value added tax needs to be fully harmonized with the EU Directive (2006/112/EC) regulating value added tax in the Community. The vast majority of economic entities were aware of this rule, yet the legislative amendment effective as of 1 May 2004 caused temporary difficulties of varying depth in the tax practices of numerous enterprises. An amending directive has been enacted in the meantime - on 12 January 2008 - which fundamentally modifies the provisions of the Directive relating to the place of performance of services. The member states are required to adopt the new / modified rules in several steps (first on 1 January 2010) - Hungary is no exception. As a means of assisting in the preparations, this newsletter highlights the legislative changes which are similar in relevance to the modifications necessitated by EU accession.

### New rules relating to the place of performance of services

#### General rule

Pursuant to the modification of the VAT Act of 1 January 2010, the main rule relating to the definition of the place of performance will vary depending on whether the recipient of the service is a taxpayer or a non-taxpayer (natural person). According to the general rule, namely, the place of performance is:

- the seat, business premises of the customer if the customer is a taxpayer;
- the seat, business premises of the service provider if the customer is a non-taxpayer

Of course, as has been the case in the past, numerous exceptions to the rule remain in effect. Compared to the current version of the law, some of the services constituting exemptions have been cancelled (and others were introduced), while certain exemptions are only applicable in relation to non-taxpayer customers.

## Exemptions

*Services provided by an intermediary on behalf and to the benefit of third parties*

The first exemption applies to an intermediated service provided to a non-taxpayer by an intermediary acting on behalf and to the benefit of a third party. In relation to these services, the place of performance is the place where the intermediated transaction is performed (even if the beneficiary of the service has permanent residence in a third state – see Section 43 3)b) of current VAT Act.

*Real estate related services*

With regard to real estate related services, the old rule remains in force; the place of performance is determined by the location of the property, regardless of the customer entity. As of the next year, however, the new law defines additional services within the scope of real estate related services. These are: renting out of commercial accommodation and transfer of rights related to the use of real property (note: as of 1 January 2008, according to the interpretation of the tax authority, the place of performance of renting out of commercial accommodation services is determined by the location of the property).

*Passenger transportation*

In the new law, regulation relating to passenger and freight transportation is set out in a separate section. With regard to passenger transportation – in conformity with provisions currently in effect – the place of performance is the distance covered during the performance of the service.

*Freight transportation*

As has been the case in the past, with regard to freight transports, a distinction is made as to the type of transport (inland, within or outside of the Community). This distinction, however, is of relevance only for non-taxpayer customers. For taxpayers the general rule shall apply (as opposed to current regulation, it is the seat and business premises of the customer, irrespective of the tax number used for the service by the customer!).

In relation to non-taxpayer customers, the place of performance is determined as follows:

- inland transports: where the transport takes place;
- transports within Community: place of departure of transports;
- transports outside of Community: where the transport takes place.

*cultural, artistic, scientific, educational, entertainment and sports services, similar services and indirectly related services*

The rule currently regulating cultural, artistic, scientific, educational, entertainment and sports services, similar services and auxiliary services will not change as of next year. In relation to services subject to this section of the law, the place of performance remains the place where the service is actually performed (but only in 2010, as of 1 January 2011, substantial modifications will take effect as to the place of performance of such services).

*services indirectly related to passenger and freight transportation;*

*expert evaluation directly related to products;*

*work performed on products.*

The place of performance of the services listed below is also determined by whether the customer is a taxpayer or not. The general rule is applicable in relation to taxpayers, while the actual place of performance determines the place of performance of the following services:

- auxiliary services of passenger transportation and freight transportation;
- expert evaluation related to products, not including real property;
- work performed on products, not including real property.

The new regulation may primarily facilitate invoicing of work performed on products between taxpayers.

*Short term rental of transportation vehicles*

As of 1 January 2010, the place of performance of the short term rental of transportation vehicles, as stipulated by the VAT Act, is defined in a separate section of the law. In relation to such services, the place of performance is the place where the transportation vehicle is given into possession, irrespective of the entity of the lessee. If the rental is not deemed to be of a short term, the place of performance is determined in accordance with the general rule, depending on the entity of the lessee (note: the rule will again be modified as of 1 January 2013 in relation to non-taxpayer lessees).

The law defines short term rental as the continuous use of the transportation vehicle for up to 30 days (save for watercraft, where the period is 90 days).

*Restaurant and catering services*

Similarly to the rental of transportation vehicles, a separate section of the new VAT Act regulates the place of performance of restaurant and other catering services. The place of performance of such services, save for restaurant and catering services provided on rail, water and aircraft, is the place where the service is actually performed.

In relation to passenger transportation within the Community, the place of performance of restaurant and catering services provided on rail, water and aircraft is determined by the place of departure.

*Transfer of rights, advertising services, consulting, ... services provided by electronic means (Section 46 2)); obligation to terminate a business activity ... (Section 46 3)a)*

In contrast with earlier years, currently the general rule relating to taxpayers and non-taxpayers is applied to services subject to Section 46 2) and Section 46 3)a) of the law, unless the customer is a non-taxpayer outside of the Community. As in the past, in the case of the latter, the place of performance of the service is determined by its residence, common place of residence (as of 1 January 2015, however, the place of performance of electronic and telecommunications services, radio and television broadcasting services provided to the non-taxpayer will change).

As noted above, as of 2010, the place of performance of intermediated services provided on behalf and to the benefit of third parties will be defined in a separate section (see above).

*Provision relating to the service's "place of enjoyment"*

Currently the VAT Act permits the application of the rule on the place of enjoyment only to services subject to Section 46, Subsections 2) and 3) and in relation to the rental of transportation vehicles, if this does not result in double taxation or tax evasion. The amendment of next year, however, significantly expands the range of services subject to taxation determined by the place of enjoyment (currently a separate law stipulates taxation based on the place of enjoyment only in relation to the rental of transportation vehicles (Decree 37/2007 PM)).

In general terms, according to the rule relating to the place of enjoyment, if the place of performance of the given service subject to the VAT Act would otherwise be in a third country (inland), while the actual consumption of the given service is inland (in a third country), according to the rule on the place of enjoyment, the VAT Act may deem the given service to be performed inland (in a third country).

*Recapitulative statement obligation*

From the date of Hungary's accession to the European Union, taxpayers are obliged to file recapitulative statements on intra-Community flow of goods. According to regulations in effect, these may only be filed on a quarterly basis (if Community transactions were conducted in the given period) and only on the supply of goods.

As of 1 January 2010, the obligation to file recapitulative statements must be met according to the frequency of tax declaration otherwise applicable to the taxpayer (that is, taxpayers filing taxes on a monthly basis must file the recapitulative statement each month as of next year). Irrespective of the frequency of tax declaration, however, if the fee originating from the intra-Community supply of goods is in excess of the amount of 100 thousand EUR within the given quarter, the taxpayer is required to switch to monthly frequency in relation to the recapitulative statements (that is, the taxpayer filing VAT each quarter will file the recapitulative statement each month).

According to another change taking effect as of next year, the filed recapitulative statement must not only indicate the Community product transactions but also the services provided to and provided by the Community partners. And since the recapitulative statement must include our own and the partner's Community tax number, in contrast to previous years, a Community tax number is required for the provision and consumption of intra-Community services. The processing of Community tax number applications may take 3-4 weeks, therefore it is advisable to obtain it in time, if necessary from the beginning of next year.

*Tax refund application of taxpayers registered abroad*

The practice of VAT refund claims of taxpayers registered abroad will also change significantly in comparison to the past years. Until now, taxpayers were required to submit their paper based refund applications to the tax authority of the member state providing the refund no later than June 30 of the year following the calendar year. As of next year, save for taxpayers with seat, business premises in third country, the application must be submitted electronically to the tax authority of the member state where the seat is located, by September 30 of the year following the calendar year (the latter will forward it to the foreign tax authority involved in the refund).

In addition to the above changes, other minor legislative modifications are expected from the next year. We will inform you on these in our next newsletter. The proposal is accessible at the website of the Ministry of Finance.

Should you have any question concerning the topics discussed in this Newsletter, we are pleased to be at your service.

**Sándor Szmicsek**  
Tax partner  
Mazars Kft.  
1074 Budapest, Rákóczi út 70-72.  
+36-1-429-30-10  
s.szmicsek@mazars.hu

This Newsletter is for the purpose of general information only. The information provided herein cannot substitute professional consultation, and it should not be used as a basis for any decision or act without prior consultation with your advisor.