

# TAX NEWS

## BULGARIA

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**December 2006**

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## TAX NEWS

Bulgaria's EU accession in the area of taxes will be facilitated by a brand new *Law on Value Added Tax ('LVAT')*, which will take effect as of same significant date 1 January 2007. It aims to introduce all the requirements of and achieve full harmonization with the *acquis* in that respect and with the Sixth Directive in particular.

From the standpoint of current VAT framework the news and the fundamental changes as found in the new LVAT have been summarized below to serve as a start-intro-point for Bulgarian businesspersons while getting ready for the new 2007:

### ● *New Concepts*

The basic new concepts in the new LVAT refer to the "intra-community supply" (nowadays export from Bulgaria to an EU member country) and "intra-community acquisition" (nowadays import from an EU member country to Bulgaria). There are also the distance sale and tri-partite operations introduced as new concepts.

In result the new law enlarges very much the scope of application of the reverse charge mechanism (i.e. the VAT is charged and due by the recipient of the supply, rather than the supplier as in the general case).

### ● *Intra-community Supply and Intra-community Acquisition*

The regime of the intra-community supplies will basically apply to supply of goods between VAT registered residents and VAT registered parties from EU member countries. Such supplies will remain taxable at 0% VAT rate in Bulgaria, subject to certain documentation requirements, but the foreign recipient of the supply is vested with the obligation to charge VAT at the rate applicable in the EU

country to which goods are transported.

The intra-community acquisition is the reverse case, in which the foreign VAT registered supplier shall not charge VAT but the tax shall be charged by the Bulgarian VAT registered recipient at the domestic 20% VAT rate.

For comparison, the regime of cross-border trade from and to countries and territories outside the Community will remain unchanged, including 0% VAT on export and 20% VAT on import charged by customs authorities.

### ● *Distance Sale*

As distance sales shall be treated the supplies where the recipient is a non-registered person and therefore the intra-community supply regime could not be applied. In such cases the liability for charging and payment of the VAT remains with the VAT registered resident supplier. Said regime could apply until the supplier reaches the registration threshold on grounds of turnover realized from distance sales determined for the respective

country where the transport of sold goods is completed. Upon reaching such threshold the resident supplier will become obliged to register for VAT purposes in the respective country where the transport is completed. Bulgaria has fixed such registration threshold for EU suppliers performing distance sales of goods transported to Bulgaria at BGN 70,000 (or approx. EUR 35,000) for the current or preceding calendar year.

● ***Tripartite Operation***

The tripartite operation will be the specific case, in which a VAT registered person in a EU member country A ('transferor') performs a intra-community supply (involving no VAT) to a VAT registered person in another EU member country B ('intermediary'), who afterwards delivers the goods to a third party in the EU member country C ('acquirer'), where the goods are directly transported from country A to country C. In such case the place of performance of the supply is deemed in country C and therefore obligor for VAT charge is the acquirer. The intermediary will not be liable for VAT on intra-community acquisition if it collects certain documents before the expiration of the tax period following the tax period when the VAT for the intra-community acquisition would have become due.

● ***Regime of Taxation of New Transport Vehicles***

The supply and acquisition of new transport vehicles shall be subject to specific tax treatment as well. Thus new transport vehicles supplied to a recipient in another EU country, even if non VAT-registered, will qualify as

intra-community supply and will be subject to 0% VAT. Alternatively, the acquisition of new transport vehicles shall be treated as an intra-community acquisition, even when acquired from a VAT non-registered supplier. In this case the acquirer, even if an individual, who is not VAT registered, shall be obliged to pay to the budget the VAT due. Also, a special declaration should be filed by the new owner with the respective directorate of the National Revenues Agency. The statutory definition of new transport vehicles extends to vessels, airplanes and motor vehicles, the latter considered new if their initial registration is made in the last 6 months or if run for up to 6,000 km. prior to the transaction.

● ***Change from Exempt to Taxable Status of Some Transactions - Real Estates***

In contrast to the provisions now in force transfer of title to regulated plots of land, as well as grant and transfer of other limited rights *in rem* over buildings and terrains adjoining to new buildings, shall be subject to VAT. Transfer of title and grant and transfer of limited rights *in rem* of agricultural and non-regulated land as well as lease of land remain VAT-exempt.

Legal services, supplies of metal scrap, privatization deals, supplies of agricultural goods are carved out from the new list of VAT-exempt supplies and shall therefore become subject to VAT.

● *Changes Regarding Financial Lease*

The VAT charge in the case of financial leasing transactions is drawn to the initial date of physical delivery of the goods to the recipient and could be no longer distributed to each lease installment. Financial lease transactions executed until end of 2006 could remain subject to the more beneficial current VAT regime of VAT charge upon each installment, conditional on the supply of certain information in an inventory by the lessor to the National Revenues Agency until end of January 2007. Failure for listing a financial lease transaction in such inventory will trigger VAT charge on the remainder of due lease installments under such omitted transaction as of 1 January 2007, thus falling due and payable until 14th of February 2007.

● *VAT Rates*

The two-rate model of 20% and 0% is altered by the introduction of additional 7% VAT rate for hotel accommodations if part of an organized trip.

● *Tax Credit*

The tax credit entitlement would be exercisable on the grounds of a duly issued tax document for the taxable supply from a registered person, while the inconvenient precondition for accrual of the tax in supplier's accounting books within a specified term, is revoked.

Another novelty is the broadening of the tax credit entitlement to cover also the cases of (i) supplies of goods and services with place of performance outside Bulgaria, if such supplies

would be otherwise taxable if performed in the country, as well as (ii) the export of financial and insurance services.

● *Invoices*

The new law does not differentiate between 'tax' and 'simplified' invoices (issued for exempt and 0%-rated supplies). The invoices to be issued for all supplies will follow the same pattern of requisites irrespective of whether the supplies are VAT taxable or exempted. Such invoices shall include among other standard requisites also the VAT number of the supplier, and in the case of 0%-rated or exempt supplies, the respective grounds for 0%-rate charge or respectively exemption.

● *Registration Rules*

The threshold for obligatory VAT registration remains at BGN 50,000, while comprising not only 20%-rated supplies, but also 0%-rated supplies (which currently could amount only to voluntary registration threshold), as well as exempted supplies of financial services and insurance services (provided they are related to the basic activity of the company).

Registration obligation will also occur in relation to (i) reached turnover of BGN 20,000, realized from intra-community acquisitions for the current year (although registration on such grounds shall not entitle to VAT credit), (ii) distance sales from a foreign person with place of performance in the country exceeding BGN 70,000 for the current or preceding calendar year, and (iii) supplies of goods,

installed or assembled on Bulgarian territory.

The new LVAT opens the possibility for voluntary registration to every person performing independent economic activity, by abolishing current threshold for the purpose. However, upon such registration, the respective person shall remain VAT-registered for a minimum period of 24 months, as of the beginning of the year following the year of VAT-registration.

The specific option for registration on grounds of certain paid-in capital has been repealed.

● ***VAT Account***

The specific VAT account has been abolished as a concept and all available funds in those existing accounts should be redirected within 15-day term as of the account holder's instructions to another bank account.

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The recently adopted *Law on Statistics Related to the Intra-community Trade in Goods* (the "LSITG"), effective as of 1 September 2006, provides the legal setting for data collection from VAT-registered obligors about the intra-community trade in goods, by way of introducing, well in advance for the new VAT regime, the new statistical information system Intrastat.

● ***New Requirements to VAT-registered Persons Performing Intra-community Trade in Goods***

Addressees of the new law are VAT-registered companies performing supplies ('dispatches' and 'arrivals') from and to Bulgarian territory of intra-community goods ("Intrastat operators"). For the purposes of the LSITG "intra-community goods" refer to (i) goods entirely obtained or

● ***Changes in the Taxable Basis***

The new LVAT takes account for the compensatory nature of certain payments and therefore explicitly excludes penalty interest and liquidation damages from the taxable basis.

● ***VIES declarations***

In addition to the monthly report declarations under the LVAT, the registered persons performing intra-community supplies or supplies as intermediary in a tripartite operation shall also file VIES-declarations until 14th of the month following the respective tax period.

produced on the Community's customs territory, (ii) goods from third countries or territories which are not part of the Community's customs territory, which have been released for free circulation in a Member State, and (iii) goods produced in the Community's customs territory entirely from the goods referred to under aforementioned items (i) or (ii).

The Intrastat system is designated to cover only goods, not covered by the Unified Administrative Document (i.e. the formal name of the customs' declaration), but without directly affecting the customs' declaring obligations, at least at present, although the tendency for the future would be towards gradual switching to the Intrastat system only. However, until the respective changes are duly introduced, all current customs obligations should be complied with, concurrently with and in addition to the Intrastat system requirements.

#### • **Registration Obligation**

Intra-community traders in goods have to register as Intrastat-operators upon reaching annual volumes of trade in such goods exceeding certain "exemption" thresholds as set forth for "dispatches" and accordingly "arrivals". Such thresholds are to be determined by the National Statistics Institute and promulgated until 31 October for the respective subsequent year. For the year 2006 the threshold for "dispatches" is set at BGN 150,000 and will remain the same for 2007, and for "arrivals" the 2006 threshold is BGN 75,000, while the 2007 threshold will be BGN 100,000.

Once exceeding any of these or both thresholds, the respective trader shall register as an Intrastat-operator by way of filing an electronic application signed with electronic signature with the respective directorate of the National Revenues Agency, where VAT registered, using its web page <http://www.nap.bg/>. The application should be filed in paper form only if the operator has no electronic

signature or a proxy will submit and sign Intrastat documents on its behalf.

The operator would be also entered in the Intrastat Registry *ex officio* upon (i) submission of an Intrastat declaration or (ii) upon failure to file an Intrastat declaration until the statutory deadline.

#### • **Reporting and Bookkeeping**

Intrastat operators are obliged to maintain electronic ledgers for all Intrastat transactions. Also, they are obliged to file Intrastat declarations with the National Revenues Agency. The obligation for filing Intrastat declarations could be annual or current. Annual obligation for the respective Intrastat operator shall occur for a particular year if one or both of the thresholds set for such year have been exceeded by the total annual volume of intra-community trade in goods for the *preceding* calendar year. In this case the Intrastat-operator should submit declarations for each of the 12 months of the respective year. Upon annual reporting, the first Intrastat declaration should be filed until 20 February of the next year. A current reporting obligation shall occur in the course of the year if the accumulated volumes of intra-community trade exceed the specified threshold in a particular month of same year. In such case, the Intrastat operator shall start presenting declarations from the month when the threshold has exceeded, until year end. The declarations should be filed until the 10th of the month following the reference period, save for first one, which is due until the 20th.

There are separate forms of Intrastat declarations for “dispatches” and “arrivals”. The declarations comprise of a common section, containing general operator’s data and a special section containing transactions data, including the “statistical value” of the goods, (namely the value calculated up to the Bulgarian border including the incidental freight and insurance expenses incurred on Bulgarian territory for dispatches, or non-Bulgarian territory for arrivals). The operator should fill in the “statistical value” only if exceeding certain specific “statistical” thresholds of trade in intra-community goods, as determined by the National Statistics Institute for the respective year, in addition to the “exemption” thresholds. For the years 2006 and 2007, the statistical thresholds are set at BGN 6,000,000 for dispatches and

BGN 2,000,000 for arrivals.

Intrastat declarations should be filed in electronic form signed with universal electronic signature by the operator or through a proxy. By exception, it is admissible to submit Intrastat declarations, documents or other relevant data to the National Revenues Agency through a licensed postal operator as well.

The Intrastat operator could be exempt from the obligation to file declarations provided it will not perform intra-community trade in goods for a certain future period of time. The operator could avail of such possibility after obtaining a special permit from the Executive Director of the National Revenues Agency.



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