

Value added tax specifications

For income tax purposes, there is no difference between the concepts 'transfer of property' and 'succession of property', or to whom the property transfers, whether from an undertaking to a sole proprietor or to a company. However, for the purposes of **the Value Added Tax Act**, the transfer and succession of the sole proprietor's assets are interpreted differently.

The transfer of a business upon the succession means in general that the property transfers to somebody who is the next of kin who will then continue the similar business. This may be considered as a continuing activity. If the person who continues the activity registers himself/herself as a person liable to value added tax, he/she will take over all the obligations and rights relating to the value added tax on the property transferred to him/her and there is no need to recalculate the input value added tax deducted earlier from the transferable fixed assets. At the same time, it means that the recipient of the estate (a person liable to value added tax) is also obliged to add value added tax to the supply for the transfer of the said property, if not the supply exempt from tax is concerned.

The transfer of the property may be handled likewise **if the sole proprietor transfers the fixed assets as a non-monetary contribution to his/her own private limited company and continues himself/herself with the similar business in the private limited company**. It is not required to recalculate input value added tax on the transferable fixed assets. The obligation to add value added tax arises upon the transfer of the property by a private limited company. A problem may arise if fixed assets are immovable property in respect of which the sole proprietor has deducted input tax. The period for the recalculation of the input value added tax deducted is ten years in the case of an immovable. If the period for the use of an immovable both by the sole proprietor and his/her private limited company is less than ten years for the purpose of taxable supply, the private limited company is required to recalculate the earlier deducted input value added tax upon the transfer of the immovable exempt from tax.

If the property is transferred to another company continuing the sole proprietor's business, it can be:

- ✓ the transfer of the business,
- ✓ a non-monetary contribution,
- ✓ the transfer of goods for money or free of charge.

The transfer of a business or a part thereof for the purpose of **the Law of Obligations Act** does not create supply and there is no need to recalculate the input value added tax on the transferable fixed assets. If a transferee starts to use the property, whether for the purposes of the supply exempt from tax or for the purposes other than business, the rights and obligations will transfer to the acquirer, including the obligation to adjust the input value added tax. If an assignment of a separated property as a non-monetary contribution or the transfer of a separated property is concerned, the assignment or transfer of the property is subject to value added tax. The company receiving the property has the right to deduct the input value added tax on the basis of the invoice. This applies only in cases where the property will

be used for the purposes of taxable supply in business. Thus, for VAT purposes, it is irrelevant to whom a fixed asset is given, it is important what will be done with the fixed assets further.

Example

A sole proprietor has bought a tractor and deducted input value added tax. The sole proprietor assigns it formally to a sewing company. It is believed, that the sewing company will not start using the tractor for the purposes of its taxable supply and the sole proprietor has to recalculate the input value added tax or charge the assignment with value added tax.

As to leasing, the leasing under the conditions of operational lease and financial lease should be dealt with separately.

- ✓ If it is the **leasing under the conditions of operational lease**, for the purposes of **the Value Added Tax Act**, it is considered a service. If such a leasing contract is discontinued or transferred to a third party, there is no need to recalculate the input value added tax. However, if a leasing company submits a credit invoice according to which it has decreased the taxable supply of the leasing transaction and the value added tax paid thereon, the recipient of the credit invoice has to decrease its deducted input value added tax accordingly.

- ✓ If a **leasing transaction is discontinued under the conditions of financial lease**, it is the acquisition of a property by the lessee and upon using the fixed assets less than five years (in the case of an immovable less than ten years), the obligation to recalculate the input value added tax will arise. At the same time, there is no exact scheme how the first lessee should act if the leasing contract is discontinued. If a leasing company submits a credit invoice and the first lessee decreases its input value added tax deducted on the basis of it, there is no need to recalculate the input value added tax on this property. However, if no credit invoice is submitted, the obligation to recalculate will generally arise.

- ✓ If a **tripartite contract** is concluded between a lessor, the first lessee and the next lessee, the leasing company will generally not submit a credit invoice. If the first lessee has deducted the entire input and used the fixed assets less than five years (in the case of an immovable less than ten years), upon the termination of the contract or on the transfer, the obligation to recalculate the input value added tax deducted will arise for him/her.