

RSM – the global destination for your audit, tax and consulting needs.



## Guidelines on due diligence compliance

### Tax Alert

Dear Readers,

**the Ministry of Finance has published “The methodology of evaluating due diligence compliance by buyers of goods in domestic transactions” (hereinafter referred to as the “Methodology”) on its website.**

This document presents guidelines that can be helpful for tax administration officials in evaluating whether entrepreneurs observe due diligence which is necessary for them to retain the right to a VAT deduction. Thus, the Ministry has abandoned its original idea of drafting a ‘code of good practice’ addressed primarily to taxpayers. Instead, what is being presented is the methodology with guidelines for the National Revenue Administration officials. In the Tax Alert below, we will discuss the main assumptions behind the said methodology.

It should be recalled that, pursuant to Article 88 paragraph 3a of the Goods and Services Tax Act, the right to VAT deduction is refused among others in the event in which:

- the sale has been documented by invoices issued by a non-existent entity,
- issued invoices, corrective invoices or customs documents:
  - provide for activities that had not been taken,
  - provide amounts inconsistent with the facts,
  - provide for deceptive activities and legal actions either in breach of the Civil Code or aimed at a circumvention of the CC provisions.

The Methodology published by the Ministry of Finance defines the most important circumstances that should be taken into account when evaluating the behaviour of taxpayers who had not committed any VAT fraud themselves and did not know that the transaction in which they purchased the goods could have been part of the fraud. This document is supposed to provide assistance to officials in their verification of the validity of the right to a VAT deduction, mainly in terms of taxpayers’ compliance with due diligence. What should be focused on is the fact that the Methodology applies only to national supplies of goods. This means that it fails to cover any kind of cross-border transactions or the purchase of services from national entities. Given the fact that there is a greater risk involved in trading with new contractors, the Methodology introduces a division into preconditions for evaluation made for the early stage of cooperation with a contractor and for continued cooperation. In both cases, formal and transactional criteria have been determined.

Even though the Methodology is addressed directly to officials, the communication by the Ministry states that it is a unique 'guiding light' for entrepreneurs, showing what revenue administration should be guided by when evaluating due diligence. This means that if a taxpayer takes actions described in the Methodology, it will boost the probability of proving that he has observed due diligence when verifying his contractors.

The primary goals behind the Methodology include:

- introduction of uniform guidelines for the entire National Revenue Administration for evaluating whether the taxpayer has observed due diligence;
- recommendations for the NRA on what should be investigated first, considering actions the taxpayer can reasonably take in practice in order to verify his contractors in a reliable manner;
- increasing the confidence of domestic turnover and transparency of NRA activities.

At the same time, we would like to draw your attention to the fact that following the guidelines set forth in the Methodology does not give the taxpayer 100% certainty that his right to a VAT deduction is not going to be challenged. It is true that the Ministry of Finance has been working on a list of preconditions for due diligence concerning VAT that would be addressed directly to entrepreneurs and would give taxpayers protection for quite a long time, however, for the time being the Ministry of Finance decided to publish only the Methodology addressed to officials. As it has been indicated, it is too early to present a document addressed directly to taxpayers. Soon we are going to discuss the guidelines of the Ministry of Finance set forth in the Methodology in more detail, and produce our practical commentary. This publication falls short of a document that would ensure legal protection for taxpayers, yet it should be welcomed. Even now, while waiting for the promised 'code of good practice', you can rely on guidelines for officials when planning your own verification procedures. It is worth spending your time and money on it; apart from functions related to typical internal control in the company, it may greatly contribute to minimising the risk of a VAT dispute with tax authorities, as well.

RSM Poland is a member of RSM, the world's 6th largest network of independent advisory and auditing companies, with 813 offices in 120 countries, employing over 43,000 professionals worldwide.

RSM Poland has been operating on the Polish market since 1991. Throughout this time we have gained vast knowledge and experience. We take pride in the unique team of professionals, counting among the best, that we were able to form.

Our company is shaped by our clients, whose requirements always take priority. That is why we offer comprehensive services tailored to meet individual needs. It is our clients who decide about the range of available services, while we give them opportunity for development and growth at every stage of their business.

Years of experience show that our approach is the key to mutual success.





Should you wish to discuss the above mentioned amendments in detail, feel free to contact our expert:

**Przemysław POWIERZA**

Tax Partner

Tax Advisor (11204)

E: [przemyslaw.powierza@rsmpland.pl](mailto:przemyslaw.powierza@rsmpland.pl)

T: +48 600 335 610

**RSM Poland**

Droga Dębińska 3b  
61-555 Poznań, Poland

[www.rsmpland.pl](http://www.rsmpland.pl)

[office@rsmpland.pl](mailto:office@rsmpland.pl)

**RSM Poland BLOG**



Practical guide to taxes and business.

We invite you to read our publication!



Please note that the presented text should not be understood as legal advice, as each individual case requires a separate, thorough analysis. Henceforth, RSM Poland Spółka Doradztwa Podatkowego S.A. and RSM Poland Audyt S.A. assume no liability in connection with use of information, advice and suggestions included in this publication.

© RSM Poland, 2018

18.05.2018

YOU KNOW  
MORE

**THE POWER OF BEING UNDERSTOOD**

AUDIT | TAX | CONSULTING

RSM Poland is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm which practices in its own right. The RSM network is not itself a separate legal entity in any jurisdiction.

