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New criminal and penal & fiscal regulations – additional concern for accountants?

Tax Alert

Dear Readers,

This year's amendments to the Penal and Fiscal Code (PFC) and the Penal Code (PC), related to the offences against reliability of documents, have had wide repercussions among people involved in keeping the books of accounts. What is it all about? Well, since 1 January 2017, sanctions for inaccurate issuance of an invoice or a bill or for using such documents have been strengthened (Art. 62 §2 of the PFC). Currently, this act is punishable with a fine up to 720 daily rates and imprisonment for the period no shorter than one year.

And on 1 March 2017, new regulations of the Penal Code entered into force, according to which the penalty of imprisonment is also imposed on the person who:

1. in order to use as authentic, forges or alters an invoice with respect to the facts that may be relevant to determine the public liability or its return or the return of any other charge of a fiscal nature or uses such an invoice as authentic (Art. 270a of the PC);
2. issues an invoice or invoices, fraudulently certifying an untrue statement with respect to the facts that may be relevant to determine the public liability or its return or the return of any other charge of a fiscal nature or uses such an invoice or such invoices (Art. 271a of the PC).

What is the significance of the aforementioned regulations?

At first glance, one can assume that the aforementioned regulations do not apply to accountants, as they do not issue invoices and in particular they do not forge or alter them. However, the imprecise terms of "handling the document" and "using the document" raise doubts. And here the question arises – does the fact that an accountant, as part of his/her duties, recognises the invoice in relevant registers mean that he/she "uses" or "handles" it within the meaning of fiscal and penal & criminal regulations?

A sensitive issue ...

The new regulations have been in force for only a few months and they still have not been explained by the representatives of science. There is also no case law of administrative and criminal courts in this respect. The direction of the introduced amendments to criminal and fiscal & penal regulations as well as intensified operations of customs and fiscal authorities, with respect to combating fiscal crimes, clearly indicates that the issue of the so-called "good faith" with respect to the tax on goods and services, and also the reliability and accuracy of documents should be viewed with caution.

For this reason, the experts of RSM Poland offer to their current and future customers appropriate support in order to protect them against allegations concerning lack of adequate verification of the reliability of contracting parties (projects "Good faith in VAT"). Moreover, in cooperation with lawyers, the tax advisors of RSM Poland offer support and consulting services with respect to the limitation of the risk of liability of persons maintaining accounting books under criminal and penal and fiscal regulations.

More details related to the aforementioned amendment of the provisions of the Penal Code and the Fiscal & Penal Code can be found in the article entitled "Will the accountant be held accountable for blank invoices" by Przemysław POWIERZA, published on 31 May in Rzeczpospolita Daily.

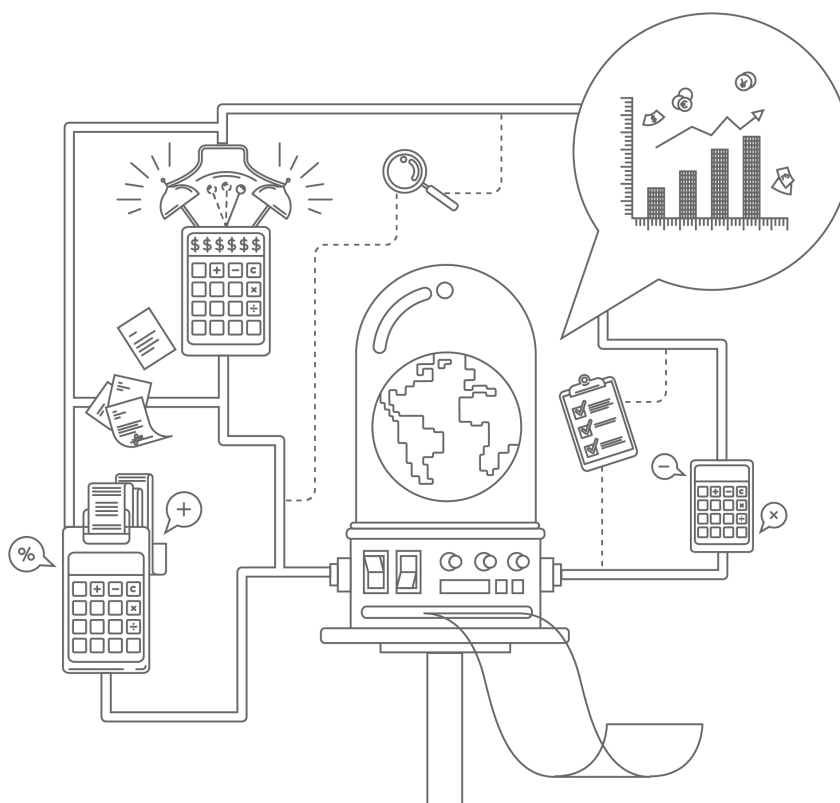
The issues related to the profession of an accountant were also discussed during the 2nd Polish Accountancy Congress, organised by the Association of Accountants in Poland, held on 5-6 June 2017 at Teatr Polski in Warsaw, under the auspices of the Ministry of Finance. RSM Poland was the main partner of the Congress and Agnieszka OSIŃSKA – Accounting & Payroll Partner of RSM Poland participated in the discussion panel.

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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 us:

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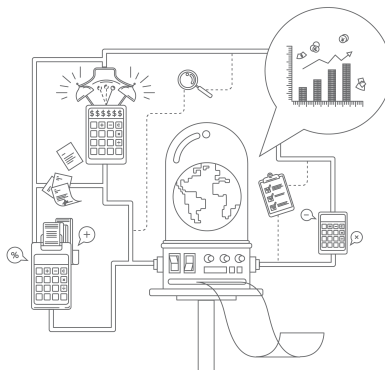
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