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## Significant VAT changes in 2017

### Tax Alert

Dear Sirs,

On 1 December 2016 the Polish Sejm passed a bill amending the Act on Goods and Services (hereinafter referred to as “the Bill”), introducing a range of material changes concerning VAT. Below we present the most essential of them.

#### Extension of the scope of the reverse charge

The Bill extends the scope of the applied reverse charge to include the construction services mentioned in detail in Annex No. 14 to the Act. A few items in Annex 11 concerning products made of precious metals have also been amended or added (Item 22a, Item 22aa, Item 22ab, Item 22c, Item 22ca, Item 27b, Item 28d). Also the transactions of processor supply (in case of so-called “economically homogeneous transactions” exceeding the amount of PLN 20,000) are now subject to the reverse charge mechanism.

#### The right to quarterly clearance

Pursuant to the wording of the Bill, “new” VAT-payers do not have the right to submit quarterly tax returns. The right to clear the tax liabilities in this way shall not be acquired by them until after 12 months following the registration. The quarterly clearance is also not allowed in case of taxpayers who in a given quarter or in the four quarters preceding it effected the supply of goods mentioned in Annex No. 13 to the Act, unless the total net value of such supplies was below PLN 50,000 in each month of such periods.

#### The obligation to submit electronic VAT returns and recapitulative statements

The obligation to submit electronic VAT returns shall be imposed on the following taxpayers:

- those obliged to register as EU VAT-payers;
- those who are suppliers or purchasers of goods and services subject to reverse charge;
- those who are obliged pursuant to the income tax legislation to submit tax returns, information and annual tax computation by electronic communication means.

The Bill introduces the obligation to submit recapitulative statements electronically, exclusively for monthly periods.

## Refund of the tax difference

The Bill also introduces certain changes in the verification of the entitlement to be refunded the tax difference. Paragraphs 2b and 2c added to section 87 of the Goods and Services Tax Act provide for the right of the tax authorities to verify the clearance done by the taxpayer and also the clearance done by other entities participating in the trade of the goods and services covered by the taxpayer's clearance and to verify the compliance of such clearance with the authentic history of the transactions concerned. In practice it means that the authorities have the right to do the so-called "cross examination" during the inspection, which in practice may involve the whole chain of supply of goods or services. The presumption of irregularities detected in one taxpayer's business may lead to inspections affecting many other taxpayers at the same time and may suspend the tax refund for many months.

Moreover, the Head of the tax office has acquired the right to extend the deadline for tax refund on the basis of a request submitted by the Chief Police Commissioner, the Head of the Central Anti-Corruption Bureau, the Head of Internal Safety Agency or the General Prosecutor in relation to pending proceedings for the period indicated in the request but not longer than 3 months. Such a request will have to state the grounds therefor.

Obtaining a tax refund in the reduced 25-day time limit will be difficult. The introduced changes result from the suspicion that this provision is abused by fraudsters with the purpose of illegal saving on tax. That is why, as a result of the new legal circumstances, there are now a few more restrictions on obtaining the tax refund in the reduced time limit.

Apart from the submission by the taxpayer of a relevant application to the tax office concerning the tax refund of the difference between input tax and output tax within the reduced time limit, the following requirements are to be met:

- 1) the payments resulting from purchase invoices shall be made with the use of taxpayer's bank account or the taxpayer's account in SKOK, and the taxpayer shall submit the documents confirming that the said payments were made;
- 2) the total amount of the remaining invoices shall not exceed PLN 15,000;
- 3) the taxpayer, for the subsequent 12 months preceding the period for which the tax refund within the reduced time limit is applied for, shall have the status of an active VAT-payer and shall document that he submitted the returns;
- 4) the amount of the input tax or the difference between the input and output tax, when carried forward to the next period (not cleared in the previous clearance periods) and stated in the tax return shall not exceed PLN 3,000;
- 5) the amount of the input tax shall result from customs documentations, import declarations and decisions and must be paid by the taxpayer (this requirement is already in force);
- 6) with respect to the transaction of the import of goods subject to the simplified procedure, the procedure of intra-Community acquisition of goods, provision of services in which the client is the taxpayer or, in case of supply of goods, the purchaser is the taxpayer, the amounts of the output tax shall be indicated in the tax return (this requirement is already in force).

Simultaneously, in order to facilitate provision by the taxpayer of the evidence that the payments were made and the verification of such a fact by the authorities, the new provisions restrict the payment obligation only to those invoices with respect to which the input tax was stated in the tax return for a given period.

## The proportion is to be determined separately for each organisational unit of territorial self-government

Section 90 of the Goods and Services Act has been supplemented with par. 10a and 10b. In accordance with the wording of the new regulations, self-government territorial units shall determine the proportion separately for each subordinate organisational unit. Organisational units shall be understood as:

- budgetary units or self-government budgetary establishments;
- district offices, county offices, province marshal's office.

## Refusal to register as VAT-payer

The changes affect also the registration for VAT purposes. Pursuant to par. 4a added to Section 96, the Head of the tax office will not register the entity as VAT-payer, without the obligation to inform the entity, if:

- the information stated in the registration application is untrue, or
- the entity does not exist or (despite documented attempts) there is no possibility to contact the entity or its representative, or
- they fail to appear when summoned by the Head of the tax office.

## **Joint and several liability of the representative**

Additionally, in case of registration applications submitted by a representative, the representative shall be liable jointly and severally with the taxpayer for any tax arrears which may arise from the actions taken within 6 months from its registration as an active VAT-payer. Such liability shall not exceed the amount of PLN 500,000 and shall be excluded if the tax arrears did not arise as a result of a dishonest clearance of the tax with the purpose of gaining financial benefits. The Bill is, however, ambiguous in this aspect and does not define if the tax arrears relate to VAT arrears only.

## **Increase of the sale value limit**

The limit entitling to a so-called entity exemption shall be increased from PLN 150 thousand to PLN 200 thousand.

## **Striking off from the register of VAT-payers**

The list of circumstances in which the Head of the tax office is entitled to ex officio strike off the entity from the register of VAT-payers has been extended and the obligation to inform the entity about this fact has been abolished. From 1st January the taxpayer may be struck off from the register if:

- it does not exist, or
- despite documented attempts, there is no possibility to contact the entity or its representative, or
- they do not appear when summoned by the tax authorities or a tax inspection body;
- the information stated in the registration application is untrue, or
- the taxpayer suspended its business activity for at least 6 subsequent months;
- if obliged to submit tax returns, the taxpayer failed to submit such tax returns for 6 subsequent months or 2 subsequent quarters;
- the taxpayer submitted for 6 subsequent months or 2 subsequent quarters tax returns in which he failed to indicate the sales and purchase of goods or services with the amounts of deductible tax;
- the taxpayer issued invoices or adjustment invoices documenting transactions which did not take place;
- running his business he was aware or had reasonable grounds to suspect that the suppliers or purchasers taking part directly or indirectly in the supply of the same goods or services act with the purpose of gaining financial benefits as a result of dishonest clearance of the tax.

On suspension of the business activity the taxpayer is registered with such a status which was held by him before the suspension of the business activity, without the necessity of submitting again an application for registration as VAT-payer.

The Head of the tax office reinstates the registration of the taxpayer without the necessity to submit registration application if:

- the taxpayer proves that he runs a taxable business activity and in case of failing to submit the tax return despite the obligation to do so, he will immediately submit such missing tax returns;
- the taxpayer proves that he runs a business activity and the issuance of an invoice or an adjustment invoice was made by mistake without the awareness of the taxpayer.

Striking off the taxpayer from the register of VAT-payers means also striking him off from the register of EU-VAT-payers.

Additionally the Head of the tax office is now entitled to strike off the taxpayer from EU-VAT-payer register if the entity submits for 3 subsequent months or a quarter the tax returns in which the sales and purchase of goods or services were not indicated with the amounts of the deductible tax. This provision applies also if the taxpayer for 3 subsequent months fails to submit the EU-VAT recapitulative statements despite the obligation to do so.

## **Additional tax liabilities**

The Bill introduces also a sanction in the form of so-called additional tax liability (in fact it is an administrative penalty).

The Head of the tax office or the tax inspection body shall define the right amount of the difference between the taxes or tax liability and shall determine the additional tax liability equal to 30% of the amount by which the tax liability was understated or 30% of the amount by which the tax refund resulting from the difference was overstated, the refund of the input tax or the difference between the taxes decreasing the output tax for the

subsequent periods, if the taxpayer in the submitted tax return stated a lower amount than the amount of the tax payable or higher amount than the difference payable or the tax refund amount or failed to submit the tax return and failed to pay the tax liability.

The amount of the additional tax liability shall be 20% if following the end of the tax inspection or during an audit procedure the taxpayer submits the adjustment of the tax return, taking into account all the detected irregularities and pays the amount of the tax liability or returned the undue amount refunded to him or the taxpayer submitted the tax return and paid the amount of tax liability.

The Bill also provides for additional tax liability in the amount of 100% in case the accordingly understated amount of the tax liability, overstated amount of the tax difference refunded or the input tax refunded, the overstated amount of the tax difference with the purpose of decreasing the output tax for the subsequent periods or the indication of the amount of the tax difference refunded or the input tax refunded or the tax difference with the purpose of decreasing the output tax for the subsequent periods, in place of indication of the tax liability payable to tax office, result in whole or in part from reducing the output tax by the amounts of the input tax arising from invoices issued by the non-existing entity, document the transactions which were not made, state the untrue amounts or document illegal or ostensible transactions (namely, under so-called blank invoices).

### **VAT rates still increased**

The Bill provides also for the retention of increased VAT rates (5%, 8% and 23%) at least by the end of 2018.

### **Greater sanctions for people responsible for VAT clearing**

We would also like to direct your attention to the amendments to the Fiscal Penal Code concerning the aggravation of the penalties for issuing or using blank invoices. In addition to the already applicable fine, the Bill provides for the imprisonment for at least one year. However, the notion of “using the invoice” is not precisely defined and it is not known whether it concerns for example bookkeeping work.

The Bill introduces many changes aimed at so-called “sealing” of the tax system and prevention of VAT abuses. The rights of the authorities, concerning the procedures done during the verification if the tax refund and registration are well-founded, will expand. The authorities will also obtain the possibility to strike off the taxpayer from VAT-payer register. The Bill also introduces sanctions which, in accordance with the grounds for the Bill, are mostly of the preventive nature. We have to wait for the consequences of the introduced changes. However, hopefully the tax authorities will not abuse their rights, and running of a business will not be impeded too much. The previous experience shows that leaving too much discretion to the tax authorities significantly impedes the operation of the business by honest entrepreneurs, cripples the administration of justice and destroys the environment in which economic development is fostered. The simultaneous lack of suggestions how to streamline the work of tax authorities leads to a conclusion that their helplessness will be camouflaged by an alternative and quite a simple solution, namely imposition of additional stringent sanctions. Their efficiency in detecting and preventing authentic crimes is however doubtful.

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

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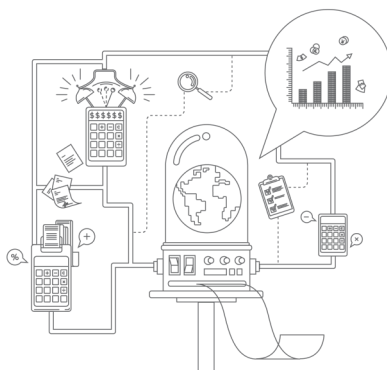
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