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Dear Sir or Madam,

Please be encouraged to learn about the newest changes in Polish tax regulations included in this tax alert.

Best regards,

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Split Payment

Beginning with 1st November 2019, voluntary so far mechanism of split payment will become obligatory when paying liabilities documented with invoice covering goods or services listed in Appendix No. 15 to the Polish VAT Act, provided that the amount of the invoice is equal or runs over PLN 15,000.

The split payment system will replace the reverse charge mechanism and instrument of purchaser's joint responsibility for the seller's tax arrears, which are currently applicable to selected local supplies. In addition to goods and services falling currently into the scope of reverse charge mechanism and joint responsibility, the split payment system will have to be applied in relation to:

- motor's vehicles parts and accessories,
- coal and coal's products,
- selected machines and electrical devises and their parts and accessories.

When selling goods or services covered with split payment obligation, the seller will be required to put a phrase "mechanism of split payment" (Pol. "mechanizm podzielonej płatności") on the invoice, under threat of tax sanction (30% amount of VAT presented on the invoice)

The purchaser will be punished by the same sanction, if against the rule, will not transfer the tax amount to the seller's VAT account. Moreover, in such a case, the purchaser will not be allowed to recognize for tax purposes the amount of expense in that part, which corresponds to the payment amount made without using split payment, despite placing on the invoice by the seller a phrase "*mechanizm podzielonej płatności*".

Breach of the given rules shall be also subject to penalty resulting from the Polish Fiscal Penal Code.

As regards invoices documenting purchase of goods specified in Appendix No. 15, which amount is below PLN 15,000, the joint responsibility of purchaser for possible tax arrears of the seller shall be applied. The responsibility will be excluded, under condition that the purchaser made payment (voluntarily) using split payment.

Split payment will be also available in respect of prepayments (instead of invoice's number, one should enter into the transfer order a phrase "prepayment", Pol. "Zaliczka"). According to the new regulations, the split payment will not apply in relation to amounts settled by offsetting made on the basis of Art. 498 of the Polish Civil Code.

In comparison to the current solutions, the Polish VAT Act will make possible to order collective bank transfers in split payment system. It has to include the total amount of VAT resulting from all invoices issued by one supplier or service provider in a period not shorter than one day and not longer than one month (in such a case, in transfer order, instead of putting the invoice's number, one should write period of time for which the payment is made)

The mentioned requirement to accept transfers on the VAT account will apply also to foreign VAT taxpayers who used to issue invoices with Polish VAT. The draft of new regulation entitles foreign taxpayers to get a refund of costs incurred on opening and keeping a bank account run by Polish bank.

The list of duties, which can be settled using funds collected on the VAT account, will be extended to CIT tax and CIT advance payments, PIT tax and PIT advance payments, custom duties and social insurance contributions.

On-line cash registers

The Polish legislator decided to introduce a new type of cash register (online register), which enables automatic data transmission relating to every transaction recorded on this register to the database kept by the Ministry of Finance. The data will be transferred with a certain frequency through telecommunications network, what obliges users of these cash registers to possess internet access in the place of sale (the regulations provide for a procedure to be followed in case internet connection doesn't work or is unavailable). Polish Ministry of Finance hopes that the data streamed through online cash machines in real time will improve the effectiveness of tax controls by more accurate determination of taxpayers, who used to neglect their obligation to register all sale made to private customers.

The obligation to use online cash registers will apply:

- from 1st January 2020 in reference to:
 - supply of vehicle repair services, including fixing, changing and regenerating of tyres,
 - sale of petrol and gas.
- from 1st July 2020 in reference to:
 - restaurant services supplied only by stationary gastronomic facilities, including seasonal one,
 - short-term accommodation services,
 - sale of coal, briquette and similar, constant fuels generated from coal, brown coal, coke and semi-coke destined to heating purposes.
- from 1st January 2021 in reference to:
 - hairdressing services,
 - beauty and cosmetology services,
 - construction services,
 - medical care provided by doctors and dentists,
 - legal services,
 - entry to fitness clubs, gyms and similar facilities.

The new cash registers will be successively made mandatory in relation to the remaining activities with expiration of old cash registers (cash registers with paper copies of receipts are valid till 31st August 2019, whereas cash registers with electronic copies are valid till the end of 2022; it means that after 1st January 2023 only online cash registers will be acceptable). In order to make usage of the new type of cash registers more popular, the refund on buying cash registers will only apply to the online type (the refund will not be granted to taxpayers who start recording sale with old type of cash register).

Despite early announcements, online cash registers will not issue receipt in electronic form (paper form will be still obligatory).

White List of VAT taxpayers

White List is a catalogue of VAT taxpayers kept by the Head of National Tax Administration in electronic form, including information about VAT taxpayers status and their bank accounts, which were reported by taxpayers to tax office. The list contains only billing bank accounts, without personal and technical accounts.

In the same time, the Polish legislator made compulsory provision for paying invoices amounting above PLN 15,000 on a bank account reported by the seller to the tax office and specified in the White List kept by the Head of National Tax Administration.

The White List, which is available on National Tax Administration's website, provides for two methods of checking the seller's bank account:

- first method (called "Search") - makes possible to find a VAT taxpayer by typing one of available search parameters (searching by Tax ID number, REGON (statistical number), or by account number) – the search result gives full information about the taxpayer, including all reported bank accounts;
- second method (called "Check") – a connection is made with a White List in order to check whether the given bank account number is used by the taxpayer registered under a specific tax ID number (NIP) - in response, the system will return information YES or NO depending on fulfilling both parameters.

In case of making payment for an invoice in cash or on the bank account not appearing in the White List, there will be sanctions imposed such as:

- tax ineffective classification of expense connected to payment (i.e. non-deductibility of expense)
- joint responsibility of the purchaser for tax arrears of the seller in case of not settling the output VAT by the seller; the responsibility can be taken off if the purchaser made payment (voluntarily) using the split payment mechanism.

The mentioned sanctions can be avoided provided that the purchaser – within 3 days period after making payment with violation of the described obligation - informs tax authority competent for beneficiary of the payment (i.e. the seller's tax office), about making payment on the bank account not specified in the White List and will provide tax authority with all required data about that payment.

The described sanctions will be effective from the beginning of 2020.

New VAT rates

From April 2020 VAT rates for goods are going to be classified under Combined Nomenclature (CN), which is used in international trade. The Polish statistical classification PKWiU will be used only to determine VAT rates for services. Generally, the amending legislation will not change services' VAT rates.

VAT rates changes for selected goods is presented in the table below:

| Goods | Current VAT rate | Future VAT rate |
|---|------------------|-----------------|
| Tropical and citrus fruits | 8% | 5% |
| Breadstuff and pastry | 5%, 8%, 23% | 5% |
| Soups, stocks, homogenized food | 8% | 5% |
| Mustard, paprika and some processed spices (pepper, nutmeg, thyme) | 23% | 8% |
| Baby food, nappies and child seats | 8% | 5% |
| Sanitary articles (sanitary pads, tampons, nappies) | 8% | 5% |
| E-books and e-press | 23% | 8% |
| Shellfish, Mollusca, water invertible – octopus, lobster, shrimp, ostreidae, mussel, crab and products made with them, and caviar - VAT rate will change from 5% to 23% | 8% | 23% |
| Ice used for food and cooling purposes | 8% | 23% |
| Firewood | 8% | 23% |
| Specialized journals | 5% | 8% |

When using reduced VAT rates, taxpayers will be able to benefit from protection resulting from the newly introduced “Binding VAT Rate Information”, which aim is to officially confirm the VAT rate for a given product or service (so called “WIS”). The WIS will come into force in November 2019 and shall be issued by an appointed tax authority on taxpayer’s application.

No similar instrument has existed in Polish tax system so far, which would provide effective protection to the taxpayer against unexpected change in tax authority’s approach on VAT rate (a classification made by statistical office is not binding in tax matters and could be questioned by tax authority in tax proceeding).

VAT return in SAF-T file (JPK_VAT)

VAT return in traditional form and JPK_VAT file (SAF-T) will be replaced with one electronic file (in the similar form as the currently prepared by taxpayers and submitted to tax office JPK_VAT file reflecting VAT registers). Content of the new JPK_VAT file (called also JPK_VDEK) will be extended in comparison to the current version of JPK_VAT file, as additional identification markings will have to be assigned to transactions performed, according to the groups specified in the regulation of the Polish Ministry of Finance. The draft of the relevant regulation contains a number of goods and services categories.

Pursuant to the new regulations, a fine will be imposed in the amount of PLN 500 for every negligence identified in the JPK_VAT file. The sanction will not be executed, as long as taxpayer corrects the mistake within 14 days from receiving a monition from tax office to correct that mistake.

The draft of the regulation, which has to introduce a new type of JPK_VAT file, is currently public consulted.

Tax Id number (NIP) of purchaser on receipt

Due to a common practice of issuing invoices to receipts, which are documenting sale to the buyers other than the invoices' recipients (to get unlawfully tax benefits), Polish legislator introduced a ban on issuing invoice to a receipt, which does not include a tax ID number (NIP number or EU VAT number) of the purchaser. Breach of the rule will be punished with additional tax liability of 100% VAT amount resulting from the invoice issued.

The mentioned restriction will be in use to receipts given after 31st December 2019.

Bad debts allowance in income taxes

The bad debts allowance, in similar form to the one currently functioning in the VAT Act, will be introduced to income taxes. Based on the new regulation, the seller will be eligible to decrease income tax basis with the value of the receivable previously accounted to tax revenues, which has not been paid or sold within 90 days after payment date stipulated on the invoice or in the contract.

At the same time, the debtor will be obligated to increase the income tax basis with the value of liability recognized as tax deductible cost, which has not been settled within 90 days after expiration of payment date.

The mentioned amendment introduces also important changes of legal nature (not relating to tax obligations), such as:

- shortening payment deadline in commercial transactions, in which the public entity is the debtor (in exception of public medical entities) - to 30 days,
- the deadline for paying liabilities resulting from transactions where the purchaser is a large enterprise and the seller is a micro, small or medium enterprise cannot exceed 60 days; any arrangements about longer payment terms will be invalid,
- increasing interest on late payments in commercial transactions by two percentage points.

The regulation will come into effect from 1st January 2020.

Taxation of intra-Community supplies of goods (so called “Quick Fixes”)

As regards tax changes revolved around the trade taxation inside the European Union, the most important one modify terms of using 0% VAT rate on intra-Community supply of goods (ISG).

For purpose of using 0% VAT rate on intra-Community supply of goods, additional documentation requirements were introduced, which fulfilment will allow the supplier to assume that the goods sold were transported to another EU country.

If the transport is realized by purchaser or by a third party acting on behalf of the purchaser, the supplier will have to possess, additionally, a purchaser’s statement i) confirming that the movement of goods to another EU country has been accomplished and ii) pointing out the EU country for their destination.

Providing the supplier with purchaser’s valid EU VAT number becomes an indispensable condition for the application of 0% VAT rate on intra-Community supply of goods.

Moreover, Polish legislator decided to introduce restriction, which will make impossible to use 0% VAT rate on intra-Community supply of goods, if the supplier does not declare the given delivery in the EU sales list in due time, unless taxpayer *“properly explains this infringement to the tax authority”*.

The new conditions applicable to intra-Community supply of goods will not be in use in relation to goods, which transport or dispatch starts before 1st January 2020 and ends after 31st December 2019.

Noteworthy is also harmonization at Community level of the rules governing the operation of the storage procedure “call-of stock” (so far EU countries were allowed to determine terms of using this procedure by themselves). The “call-off stock” solution enable taxpayer to postpone the taxation of goods transported from EU country to the warehouse placed in another EU country to the moment of picking up the goods from the warehouse by the purchaser, relieving the seller from obligation to register for VAT and to declare intra-Community movement of goods in the country of destination.

The EU legislator decided also to change the rules of determining movable transaction when the goods are transported or dispatched from one Member State to another Member State directly from the first supplier to the last customer in a chain transaction. According to the new regulations, in case the intermediary is deemed responsible for movement of goods, the transport is supposed to be linked to the supply made to the intermediary entity, unless intermediary operator provides his supplier with VAT number assigned by the EU country, in which the transport or dispatch of goods begins.

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