

The tax office will soon be able to obtain information at a glance
– communication with the tax authorities – the 21st-century taxpayer

Tax Transparency



Contents:

<i>Introduction</i>	3
1. When taxes became interesting – reasons for increased regulatory activity	4
2. Global tax transparency – institutional response on a global scale	6
3. Widely available information – the effect of technological development on tax settlements	8
4. The main aspects of changes in the Polish tax regulations	9
4.1 The Uniform Control File (PL: Jednolity Plik Kontrolny, the JPK)	9
4.2 Broadened scope of transfer price reporting	10
4.3 VAT	12
Split payment mechanism	11
Joint and several responsibility for tax obligations	13
Toughening up of the penalties for issuing false invoices	14
4.4 The tax procedure	14
Anti-avoidance clause and protective tax rulings	14
Changes in the procedure of individual interpretations becoming binding	15
4.5 Implementation of the AML Directive	15
Extending the list of entities obliged to report and the range of disclosures	16
4.6 Change in the activities of the tax authorities	17
Increased frequency and scope of inspections	17
Reorganization of the fiscal system from 1 March 2017 – formation of National Fiscal Administration	19
Publication of income and income tax amounts	19
5. Need to prepare for the reality of tax transparency	20
5.1 Administrative burdens	20
5.2 The extent of permitted tax planning	21
5.3 Possible facilitations	21
6. Conclusions	23
<i>Contacts</i>	24





Introduction

Global economic and social trends are posing increasingly tough challenges for multinational organizations and state institutions that regulate the principles for conducting business activities. Fiscal policy is a particularly controversial area. It has a huge impact on the way business is conducted and is, at the same time, a subject that is readily taken up by the media, and is also one of public interest.

As a result, multinational organizations and governments are striving to increase supervision over the fiscal policies of businesses and their compliance with obligations towards state budgets. One of the practical consequences of these endeavours is that more and more extensive reporting obligations are being imposed on businesses while the rights of public inspection bodies continue to be extended. New administrative burdens, related to the bodies which obtain comprehensive information about taxpayers, are mainly imposed on professional businesses, in particular on financial institutions.

The overall changes recently implemented in the Polish regulations are the result both of observed international trends and the coinciding efforts of local government administration bodies to increase the country's budgetary effectiveness. It is easy to discern that the objective of the changes is to gain the fullest possible control over the integrity of businesses when making settlements with the State Treasury, and therefore, increased taxpayer transparency.

In this report, we summarize the various aspects of the changes aimed at increasing tax transparency and suggest how you can effectively prepare for the new reality.

1. When taxes became interesting – reasons for increased regulatory activity

pln 45 billion

this is the size of the VAT gap in Poland in 2016, according to PwC estimates

Increased regulatory activity has been noticeable ever since countries began reaching for fiscal tools to mitigate the effects of the global financial crisis of 2007, especially to prevent further drops in inflows from taxation. On the one hand, these actions were aimed at stimulating entrepreneurship and turnover, and on the other, at tightening up tax systems.

It should be noted that when there is a dramatic slump in the economic situation, entrepreneurs incomes go down, firms collapse, and unemployment grows, which increases the need for precautionary measures and security because the system suddenly turns against taxpayers. In such a situation, tax burdens are particularly severe for entrepreneurs. Therefore, a difficult economic situation can result in increased unfavourable and harmful phenomena and behaviours – the extension of the grey zone and more frequent misappropriation and tax crimes. Research conducted in 2015 by the Centre for Social and Economic Research at the behest of the European Commission, shows that the VAT gap in the European Union is approx. EUR 170 billion and that cross-border frauds alone result in losses of income from VAT of approx. EUR 50 billion a year.¹ According to PwC's estimates, the tax gap in Poland in 2016 amounted to approx. PLN 45 billion. A year earlier it amounted to 2.8% of the GDP.² Compared with other EU Member States, the Polish VAT gap is somewhere

in the middle – it is higher in Romania and Slovakia and lower in the Czech Republic and Hungary.³

Taxation is also becoming the object of increased social interest due to the fact that the media tend to focus on the tax planning activities of multinational enterprises and even well-known individuals. The LuxLeaks and Panama Papers scandals gained publicity, and the comments made in public debate frequently contributed to strengthening the stereotype that tax optimization can only be perceived as a criminal activity, and resulted in creating social resistance to tax planning activities.⁴

Under the impact of the economic slowdown and “shrinking” inflows to the state budget, the financial administration bodies of individual countries were faced with the need (and with public expectations) to take measures aimed at extending the scope of control over the tightness of the tax system. Measures aimed at tightening up the tax system were taken both on an international scale (on the OECD, G20 and European Union forums) and by individual countries – both with regard to regulatory and statutory aspects as well as actual supervision and control.

In Poland, too, the tax authorities faced a number of challenges related to the need to change the tax regulations. Above all, they took actions aimed at countering so-called aggressive tax optimization, i.e.

¹ https://ec.europa.eu/taxation_customs/sites/taxation/files/2016-09_vat-gap-report_final.pdf

² <http://www.pwc.pl/pl/media/2016/2016-11-23-luka-vat-2016.html>

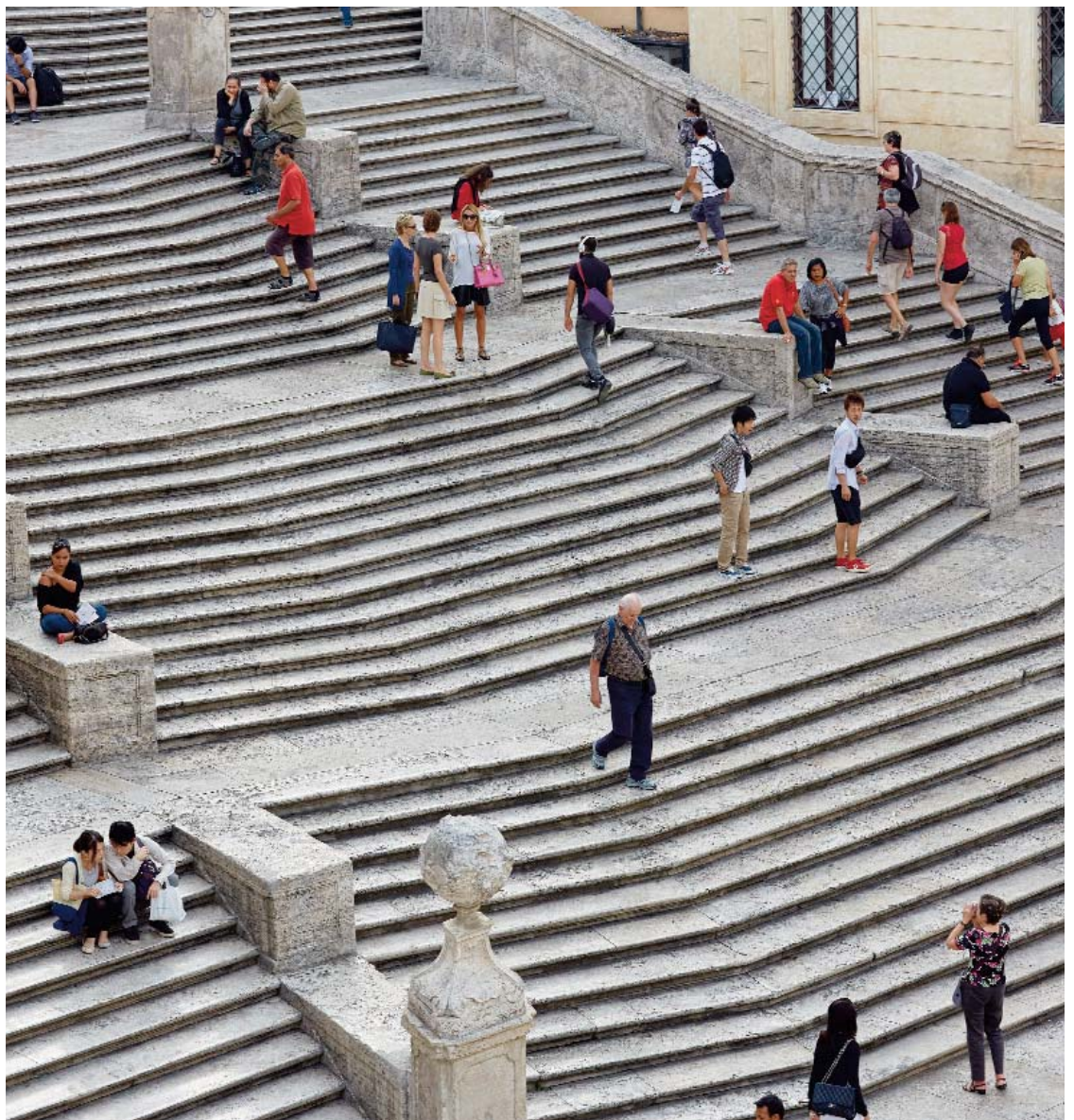
³ The Supreme Audit Office also observed the limited abilities of the tax authorities with regard to effectively combating tax crimes. According to the report of the Supreme Audit Office of 23 March 2016, the gap in the collectibility of VAT remains higher than the average level in European Union countries, which obviously generates considerable losses in the state budget. The Supreme Audit Office Report “Przeciwdziałanie wprowadzaniu do obrotu gospodarczego faktur dokumentujących czynności fikcyjne” [Counteracting the introduction of business trading invoices documenting fictitious activities], at: <https://www.nik.gov.pl/plik/id,10427,vp,12756.pdf>

⁴ “Agresywna optymalizacja podatkowa, unikanie opodatkowania powinno być traktowane jak przestępstwo, a informowanie o tego typu skandalach nie powinno być karane(…)” [Aggressive tax optimization, tax avoidance should be treated as an offence, and informing about such matters should not be penalized(…)] at: <http://www.money.pl/gospodarka/wiadomosci/arttykul/panama-papers-raj-podatkowy-podatki,191,0,2053567.html>

activities that do not violate the literal wording of the regulations but their actual purpose. A specific impetus which increased the regulatory activity of Polish authorities was the impact of international initiatives, such as OECD recommendations regarding BEPS and the EU regulations based on them, for example, the ATAD Directive (Anti-Tax Avoidance Directive).

Bearing the above in mind, the Ministry of Finance is endeavouring to introduce comprehensive solutions to increase the tax transparency of businesses operating in Poland. The purpose

of implementing ICT systems, the Uniform Control File, electronic receipts and the Central Register of Invoices is to enable the tax authorities to have insight into all the business transactions and activities of a business which will help identify tax misappropriations, including tax optimizations that are contrary to the objectives of the tax acts. The tax transparency of entities and business transactions is supposed to help the tax authorities identify phenomena related to tax misappropriation (e.g. VAT extortion) and ensure the financial safety of the state.



2. Global tax transparency – institutional response on a global scale

At all levels – domestic, European and global – the authorities are striving to achieve a greater tax transparency, which is aimed at tightening up the tax system and, consequently, increasing budget receipts.

With the growing number of international transactions, mobility of employees, the growing number of tax crimes and globalization of financial markets, the need to improve mutual assistance between individual tax administration systems with regards to exchanging widely-defined tax information has become particularly important. In connection with the growing globalization and interpenetration of individual tax systems, the tax authorities have recognized the need for cooperation aimed at liquidating tax crimes and cross-border tax avoidance.

The OECD has taken action to prevent the erosion of tax bases and transfer of profits, mainly due to the fact that the effects of BEPS (Base Erosion and Profit Shifting), i.e. intentional actions by taxpayers aimed at reducing tax bases and depositing funds in countries with low taxes or no tax at all (so-called tax havens) has become more and more obvious not only on domestic markets but also on a global scale.

The final effect of the efforts undertaken by the OECD and G20 countries was the OECD's BEPS Recommendation published in October 2015. The OECD Recommendations were divided into 15 actions, the purpose of which is to tighten up national tax systems. The most important actions provided for in the report that are worth mentioning include the disclosure of aggressive tax planning arrangements (Action 12) and actions regulating transfer pricing – including Country-by-Country (CbCR) reporting (Actions 8, 9, 10, 13). The Polish authorities actively participated in the OECD activities, therefore, the published recommendations were the incentive for the amendments to the CIT and PIT Acts of 15 June

2015 clarifying the definitions and introducing modified obligations concerning documentation for entities conducting transactions with related companies (CbCR).

Due to the need to develop a common standard and coordinate activities at EU level, on 28 January 2016, the European Committee, based on OECD guidance, presented a set of proposals for preventing tax avoidance and developing transparency and ensuring fair competition in EU countries (Anti-Tax Avoidance Package; "ATAP"). These proposals include the Anti-Tax Avoidance Directive ("the ATAD Directive"). The objective of the ATAD is to introduce common principles for combating aggressive tax practices at EU level.

The exchange of information has also been regulated outside EU structures. The American Foreign Account Tax Compliance Act ("FATCA") enacted by Congress in 2010 places an obligation on foreign banks and financial institutions to inform the US tax authorities ("the IRS") about accounts maintained on behalf of US taxpayers. The individual countries, including Poland, have signed agreements with the US government implementing the FATCA regulations into their internal legal systems.

It is also worth noting that in July 2014, the OECD Council published a complete global standard on the automatic exchange of financial information (the Common Reporting Standard – CRS) which was approved by the Finance Ministers and Presidents of the Central Banks of the G-20 Group in September 2014. It is based on the model introduced by the US FATCA. In Poland, the draft act implementing provisions enabling

the fulfilment of obligations arising from the Multilateral International Agreement on Automatic Exchange of Information (“CRS”) contains new obligations concerning the identification of customers by financial institutions and extends the list of entities responsible for identification and the group of customers to be covered by the reporting compared with the act concerning the US FATCA regulations.

Subsequent EU regulations, including Directive 2014/107/UE which constitutes part of the ATAP package, are based on the solutions developed by the OECD as part of the Common Reporting Standard procedure. The Council Directive 2014/107/UE of 9 December 2014 amending Directive 2011/16/UE with regards to mandatory automatic exchange of information on taxation, extends the scope of information to be transferred between tax authorities to include reports prepared on a Country-by-Country (CbCR) basis. According to this directive, Member States are obliged to provide a specific set of basic information concerning individual interpretations with cross-border reach and transfer pricing arrangements. Pursuant to the said Directive, from 1 January 2017, within 3 months following the end of the first half of the calendar year during which the cross-border tax interpretations or APA (advance pricing agreements) are issued, renewed or amended, the Member States will be obliged to provide the European Commission with information specified in the Directive, among other things, about the entity, the wording of the interpretation and the transaction amount.

EU Member States will be also obliged to provide information in line with the principles set out in the Directive with reference to the interpretations issued during the five years preceding 1 January 2017. The European Commission also proposes increasing tax transparency by introducing public reporting for the largest firms.⁵ However, the changes arising from Directive 2014/107/UE based on the automatic exchange of information concerning amounts on bank accounts give rise to concerns due to the considerable limitation of bank secrecy. In Poland, these regulations will become effective from May 2017.⁶ However, it is worth noting that apart from the existing exchange of information at the request of a foreign state, automatic exchange of information *ex officio* has been introduced with reference to the income of individuals earned from specific sources.

All the solutions presented above and the implementation of the related tools serve mainly to increase the tax transparency of the individual entities and capital groups, so that tax inspections and therefore the tightening up of the tax system, become more effective. It is, therefore, obvious that on all levels: domestic, European and global, the authorities are striving towards higher tax transparency with a view to tightening up the tax system and therefore increase inflows to the budget. It is worth noting, however, that the burden of increasing taxpayer transparency will be borne mainly by the taxpayers themselves and by the financial institutions obliged to collect specific information.

⁵ Np.: http://europa.eu/rapid/press-release_MEMO-16-2406_en.htm , http://europa.eu/rapid/press-release_IP-16-1349_en.htm

⁶ <http://gospodarka.dziennik.pl/podatki/artykuly/543722,tajemnica-bankowa-podatnicy-urzednicy-panstwa-unia-europejska.html>

3. Widely available information – the effect of technological development on tax settlements

The Ministry of Finance has perceived the benefits of using Big Data and of the automation and computerization of tax processes

Big Data, i.e. the fast changing, large, changeable and diverse data sets,⁷ generated by numerous entities, including taxpayers, authorities, public institutions, anonymous internet web users, and in the case of financial institutions – their customers or business partners. Private firms are reaching more and more frequently for Big Data in order to increase their competitiveness on the market and optimize business processes. Big Data is also used for the protection of public safety, among other things, for detecting cyber-attacks and catching the perpetrators.⁸

Given the extensive usefulness of Big Data, it is impossible to overlook the possibilities of its use by the tax authorities. They use these data sets to increase the efficiency of tax inspections and help fight against the tax gap. This is because the comprehensive use of mass data helps the tax administration better perform its tasks. By using special algorithms or multi-level data, the tax authorities can analyse the information they receive more easily, more quickly, and more accurately. They can also more effectively analyse the trends in the interpretations issued by analysing whether the transactions concluded are directed towards optimization.

The Ministry of Finance has perceived the benefits of using Big Data and of the automation and computerization of tax processes, and it is implementing actions such as the Uniform Control File and Central Register of VAT Invoices. Also with regards to transfer pricing, the tax authorities have specialized in making use of external databases enabling more effective control

over the transactions of entities operating as part of capital groups. In the “Plan of measures increasing tax compliance and improving the effectiveness of tax administration in the years 2014–2017”, the Ministry of Finance proposes making use of IT tools to increase the effectiveness of tax inspections which at, present, are taking far too long, disorganize the activities of enterprises and are not effective enough from the perspective of the tax authorities.

Another element of the measures taken by the Ministry of Finance are plans to introduce a Central Register of VAT invoices which would constitute a centralized database with the possibility of linking this system with the monitoring of payments. A similar system has already been introduced by Spain and Brazil. Online access to transactions for the purpose of subjecting them to a tax inspection had already been proposed by the European Commission in 2010 in the “Green Book on the future of VAT”. The centralized database will be an all-Poland data set to which all invoices will be sent not only for archiving but also for detailed analysis to help the tax authorities detect carousel frauds, false invoices and the incorrect allocation of VAT rates.

To summarize, Big Data can certainly be applied in the activities of the tax authorities, and with time will be used more and more (for example, introducing the Uniform Data File), therefore contributing to more effective performance of tasks by the tax administration. Thanks to the reforms being implemented, the tax authorities will soon be able to handle data on a mass scale.

⁷ META Group Report, definition of Big Data in the 3V model, at: <http://blogs.gartner.com/doug-laney/files/2012/01/ad949-3D-Data-Management-Controlling-Data-Volume-Velocity-and-Variety.pdf>

⁸ <https://www.forbes.com/sites/andygreenberg/2013/08/14/agent-of-intelligence-how-a-deviant-philosopher-built-palantir-a-cia-funded-data-mining-juggernaut/#7a123e377852>

4. The main aspects of changes in the Polish tax regulations

4.1 The Uniform Control File

Looking at the changes in the Polish tax regulations over the past several years, it can be said that one of the most important amendments aimed at automating and streamlining the operations of the tax authorities has been the introduction of the Uniform Control File. This institution, implemented by art. 193a. of the Tax Code, introduces an obligation to submit data in the form of a Uniform Control File. From 1 July 2016, this obligation covers large entrepreneurs and for others, i.e. medium, small and micro entrepreneurs, it will become binding from 1 July 2018. In the case of JPK_VAT reporting the obligation applies to both large (from 1 July 2016) and small and medium enterprises (from 1 January 2017).

The Uniform Control File comprises tax files and other accounting documents maintained using software, which are transferred using means of electronic communication or on electronic data carriers, at the behest of the tax authorities, in an appropriate format. The purpose of introducing the JPK is mainly to speed up the process of the taxpayer providing data to the tax authorities which, in turn, should result in shortening the time and increasing the effectiveness of tax inspections. Furthermore, it is expected that such a solution will help minimize the tax authorities' interference in the ongoing business of the entrepreneurs and therefore lessen the arduousness of tax inspections and reduce the

cost of tax inspection procedures. Therefore, the purpose of introducing the JPK was to improve inspection results by making them more thorough (the possibility of carrying out an inspection of obligations in respect of various taxes, for example, VAT together with CIT) but also by increasing its effectiveness (possibility of using IT tools to carry out an inspection). According to the legislator's intentions, the JPK will benefit both the tax authorities (automation, possibility of analysing data promptly and accurately) and taxpayers (easier ways to provide a large amount of data, faster inspection process). However, it should be noted that introducing the changes requires expenditure on the part of the taxpayer to adapt the IT systems to reporting in the form of the Uniform Control File.⁹



⁹ The final template for the JPK presented by the Ministry of Finance is composed of 7 structures: books of account, bank statements, warehouse, records of VAT purchases and sales, VAT invoices, tax revenue and expense ledger and sales records. Entrepreneurs who evade the obligation to submit the JPK will be subject to sanctions provided for in the Tax Code and in the Penal and Fiscal Code

4.2 Broadened scope of transfer price reporting

Implementing the OECD recommendation concerning BEPS into the Polish system resulted in introducing, among other things, taxation of income of controlled foreign companies CFC and thin capitalization – thin cap.¹⁰ The new regulations also introduced, among other things, a general clause preventing misappropriation in the event of applying tax exemption with respect to income from dividend and other income from the share in profits of legal persons; the so-called small GAAR clause, which constitutes the implementation of EU Directive 2015/21 of 27 January 2015 into the Polish legislation; the list of income of non-residents subject to taxation in Poland; the principles for taxing contributions of assets which are not a business (a business

unit) at market value; and preconditioning the application of the exemption of licence-related interest and receivables from withheld tax upon the recipient meeting beneficial owner status. Moreover, on 1 January 2017 the amendments to the CIT Act concerning taxation of investment funds came into force.

One of the crucial changes connected with the implementation of OECD recommendations concerning BEPS to the Polish tax system are the changes to Polish PIT and CIT Acts concerning transfer pricing.¹¹ Despite the fact that the OECD recommendations are not a commonly binding law, they are a reference point for state bodies and the legislation of member states. The changes introduced refer, among other things, to transfer pricing documentation for transactions concluded with related entities.

Changes in transfer pricing documentation – mandatory components

CURRENT REQUIREMENTS

1. Local file

Detailed information on specific transactions. Justification for the arm's length nature of price is not required (benchmark studies are not mandatory)

NEW REQUIREMENTS

1. Local file

Detailed information on specific transactions (including benchmark studies which are mandatory when revenues/costs > EUR 10 millions).

2. Declaration

Declaration that tax documentation has been prepared, submitted together with a tax return.

3. CIT-TP declaration

A report (information on a taxpayer and transactions concluded) submitted together with tax return.

4. Master file

Description of business activities and operating model of the group.

5. Country by country report (CbCR)

Aggregated information on the allocation of income and taxes paid by the group in specific jurisdictions.

Revenues/expenses

> EUR 2 million

> EUR 2 million

> EUR 10 million

> EUR 20 million

consolidated group revenues > EUR 750 million

¹⁰ The Act of 21 October 2014 amending the Act on the amendment of the CIT Act, the PIT Act and some other acts, Journal of Laws of 2014, item 1478

¹¹ The Act of 9 October 2015 on the amendment of the CIT Act, the PIT Act and some other acts, Journal of Laws of 2015, item 1932

The documentation comprises:

- local files in which the taxpayers will be obliged to present, among other things, a summary of transactions, transaction values and an analysis of the process for setting up transfer prices;
- global files containing information about the entire multinational capital group and the transfer pricing policy;
- Country-by-Country reporting (CbCr) under which the largest capital groups (with consolidated revenues of the entire group above EUR 750 million) will be obliged to prepare a statement comprising, among other things, the level of revenue, profits, tax remitted and the number of employees.

Similar reports will also be prepared in other countries and thanks to the exchange of information in line with the OECD guidance, the tax authorities will be able to identify violations of the transfer pricing regulations more effectively and select entities which should be subjected to inspections. The changes introduced have resulted in a significant broadening of the scope of transfer pricing documentation – and, as

a result, the tax authorities will have a more complete picture of the operations of multinational tax groups, including the allocation of IA, outlays on research and development and other key aspects of operations.

For taxpayers, the changes which have been introduced will mean, on the one hand, increasing their responsibility for the quality and consistency of the documentation (the obligation to prepare additional reports, increasing the amount of information obligatorily disclosed on a national level), and on the other hand, introducing personal responsibility for transfer pricing issues (it will be necessary to submit a signed statement to the tax office on possessing full documentation). Moreover, these changes are supposed to lead to increased transparency—the consistency of the documents will be improved and the uniform format of the documentation will facilitate its analysis and comparison by the tax authorities, thereby improving the effectiveness of inspections.

In conclusion, the changes in the Polish tax system based on the international BEPS recommendations are aimed at creating better transparency of transactions with related entities.



Under the split payment model the tax authorities may control the amount of output VAT already at the transaction stage.

4.3 VAT

Split payment mechanism

As announced by the Minister of Finance, the Ministry of Finance is currently working intensively on introducing a solution aimed at tightening the VAT gap. The basic solution in this scope is to introduce the so-called split payment mechanism which is the direction in which the activities of the Ministry of Finance are heading. According to information in the press,¹² the Minister of Economic Development and Finance, Mateusz Morawiecki, assumes that this mechanism should be implemented into Polish legislation within several months. Split payment is a mechanism aimed at counteracting tax crimes by excluding the possibility of a dishonest taxpayer defrauding VAT. In principle, this model is applicable solely in the case of payments made via electronic means (i.e. bank transfers or card payments).

Applying the split payment mechanism results in dividing the gross amount into two payment streams. The net amount is isolated and paid to the seller and the tax amount is transferred directly to a special bank account, a so-called VAT account. The VAT account is an individual bank account created for each VAT taxpayer. The taxpayer does not have the ability to freely dispose of cash accumulated on the VAT account. The account may only be used for paying this tax to another taxpayer. If the amount on the taxpayer's VAT account is insufficient to settle input VAT, the balance is drawn from an ordinary bank account of the buyer. VAT accounts may be opened in individual commercial banks or, depending on the solution adopted, only in one bank, which is applicable for the tax office.¹³

Under the split payment model, the tax authorities may already inspect the amount of output VAT at the transaction stage, from the moment of the buyer making the payment. This is done by obtaining insight into the payments made by taxpayers through their VAT accounts on which transactions are recorded in real time. The model assumes that the tax authorities should be able to constantly monitor payments made by taxpayers and also block them.¹⁴

The split payment model assumes that for each settlement period, after the taxpayer has submitted a tax return, the taxpayer and tax office perform their mutual VAT settlements based on the tax return submitted and the current balance on the taxpayer's VAT account. In consequence, the taxpayer shows the amount of VAT to be paid or reimbursed. It should be emphasized that introducing the split payment model does not in any way limit the right to deduct the VAT accrued by taxpayers. Each taxpayer retains the right to deduct VAT for goods and services purchased.¹⁵

The above solution is an example of the very broad rights granted to the tax authorities in supervising the tax settlements of taxpayers. This is because according to the provisions of the VAT-related split payment model, the rights of the tax authorities are not limited simply to accumulating detailed information about taxpayers but, in practice, involve the possibility of the tax authorities taking over some of the functions directly related to the actual tax settlements made by the taxpayers. Such is the situation under the split payment model because the tax authorities are entitled to carry out inspections of output VAT at the stage of the transaction itself, i.e. from the moment the buyer makes the payment.¹⁶

¹² <http://forsal.pl/artykuly/1021773,morawiecki-split-payment-przy-rozliczeniach-vat-jeszcze-w-tym-roku.html>, <http://www.gazetaprawna.pl/artykuly/1021787,morawiecki-za-kilka-miesiecy-bedzie-gotowe-rozwiazanie-tzw-split-payment.html>, <https://www.pb.pl/split-payment-skuteczny-w-walce-z-oszustami-vat-ale-855427>, <http://www.forbes.pl/split-payment-w-polsce-za-kilka-miesiecy,artykuly,211315,1,1.html>, <http://www.polskieradio.pl/42/273/Artykul/1731009,Split-payment-tzw-podzielona-platnosc-VAT-bedzie-gotowa-za-kilka-miesiecy>, <https://www.obserwatorfinansowy.pl/dispatches/morawiecki-split-payment-uszczelnieni-system-vat/>

¹³ <https://www.pwc.pl/pl/pdf/split-payment-raport-pwc.pdf>

^{14, 15, 16} Ibidem.

Joint and several responsibility for tax obligations

The mechanism of the joint and several responsibility of the taxpayer and entity making a delivery of goods has been binding under the VAT Act since 1 October 2013. This means that the taxpayer to whom a delivery of goods listed in appendix no. 13 to the VAT Act (including steel products or fuels) has been made is jointly and severally responsible for the tax arrears of the entity making the delivery, in the proportion attributable to the delivery made to said taxpayer. For this responsibility to arise, the value of the goods delivered (listed in appendix no. 13) purchased from one entity making the delivery must exceed PLN 50,000 in a given month (net of VAT). At the same time, the tax payer must know or have justified reasons for believing that the entire amount of tax attributable to the delivery made to him, or part thereof, will not be paid to the account of the tax office.

On 1 January 2017, the Act of 1 December 2016 amending the VAT Act and some other Acts came into force.¹⁷ One of the most crucial changes brought about by this Act is that it modifies the scope of the joint and several responsibility of buyers for the tax arrears of entities making deliveries of goods, by introducing an additional condition which should be fulfilled so the taxpayer can be released from the said responsibility. The condition is that the buyer makes the payment for the purchased goods to the bank account of the seller indicated in the tax identification application.¹⁸

The system of joint and several responsibility of buyers for the tax obligations of sellers is an example of the double-monitoring obligation placed on taxpayers. On the one hand, the tax authorities exercise supervision over the taxpayers, on the other hand, the taxpayers themselves are obliged to monitor their business partners to be able to show that they exercised due care, and therefore be released from the responsibility for the tax obligations of their business partners.

This solution shows a clear intention of making the taxpayers accumulate as much data as possible and comply with the reporting obligations to a broad extent, as this is supposed to be in their best interests.

The amendment to the VAT Act also introduced the mechanism of so-called joint and several responsibility of the proxy into the Polish legal system. According to the wording of this new regulation, i.e. art. 96 clause 4b of the VAT Act, the said joint and several responsibility applies to proxies who have registered an active VAT taxpayer. In such situation, a proxy who submitted a registration application for VAT purposes bears joint and several responsibility with the registered taxpayer with respect to the taxpayer's tax arrears arising on account of the activities performed by that entity. Joint and several responsibility of the proxy for the said tax arrears is limited to PLN 500,000 and comprises tax arrears arising as a result of the taxpayer's operations in the 6 month period from the date of its registration as an active VAT taxpayer.

It seems that in the case of the said solution, the legislator's intention was to extend the group of entities responsible for potential attempts of VAT misappropriation by partially transferring the responsibility to the proxies registering active VAT taxpayers. There are, however, some doubts whether the binding legal regulations provide for realistic and effective verification methods for the proxies which would enable the prevention of potential misappropriations on the part of newly registered taxpayers. In a way, the above instrument forces an obligation on professional proxies to accumulate a wide range of data concerning customers on behalf of whom they only submit registration applications but this fact gives rise to the proxies having the obligation to monitor the business activities of the entities registered by them during further stages of their activities. However, in practice, the influence of the proxies on the activities undertaken by the entities they register may only be illusory.

¹⁷ The Act of 1 December 2016 amending the VAT Act and some other acts (Journal of Laws of 2016, item 2024), hereinafter: "the VAT amendment Act".

¹⁸ <http://ksiegowosc.infor.pl/podatki/vat/rozliczenia-vat/746900,Solidarna-odpowiedzialnosc-za-zaleglosci-podatkowe-w-VAT-zmiany-od-2017-roku.html>

In practice, the tax evasion clause is a tool used by the tax authorities to fight aggressive tax planning.

Toughening up of the penalties for issuing false invoices

On 1 March 2017, the Act of 10 February 2017 amending the Criminal Code Act and some other Acts will come into force.¹⁹ The amendments to be introduced by this Act are dictated by the growing number of frauds relating to VAT misappropriation and the resulting growth of the VAT gap. In order to prevent the said contraventions, the Act amending the Criminal Code introduces a new category of fraud consisting of, among other things, issuing false VAT invoices. In other words, the legislator has introduced a criminal sanction for forging or counterfeiting VAT invoices to defraud VAT from the state budget.

In the justification to the draft Act amending the Criminal Code it was pointed out that the commonly available data on the scale of VAT misappropriations shows that both the existing legal status and the practice of the judicial authorities with regard to counteracting misappropriations are insufficient, and that introducing more rigorous legal and penal protection against misappropriations has been proposed by the entrepreneurs themselves. The reasons for such proposals stated by entrepreneurs were that VAT misappropriations not only upset the fair competition and free market rules but even “enticed” the participants in business trading to transfer their operations to the so-called “grey zone”.

The tightening of legal sanctions for introducing forged or altered VAT invoices is, on the one hand, aimed at eliminating the said practice by driving potential perpetrators away from misappropriation due to the severity of the penalties imposed for such offences, and on the other hand, the purpose of the regulations in question is to increase the transparency of documenting business trading for tax purposes.

4.4 The tax procedure

Anti-avoidance clause and protective tax rulings

The anti-avoidance clause was introduced to the Polish legal system in the middle of 2016. It is a legal institution which authorizes tax administration bodies to question, based on the tax regulations, the taxpayers’ right to enter into transactions which, although complying with the exact wording of the regulations, are formulated in such a way as to achieve a different effect from that intended by the legislator.

In practice, therefore, the anti-avoidance clause is a tool to be used by the tax authorities to fight against aggressive tax planning (aggressive tax optimization), i.e. the way of concluding transactions whose main purpose is to reduce the amount of the tax obligation. According to the justification for the draft amendment of the Tax Code, the purpose of introducing the anti-avoidance clause into Polish legislation is to organize the tax system by setting limits for permissible tax optimization. Its purpose is also to strengthen the autonomy of the tax law vis-à-vis civil law.

In connection with implementing the anti-avoidance clause, a parallel mechanism of protective tax rulings was introduced. An interested person may apply to the minister responsible for public finance affairs to issue a protective ruling and the application can relate both to activities that are in progress or are only planned. The application for the ruling should contain information which is significant from the point of view of the tax effects of the activities in question, a full description of the activities, including their economic and business justification and the tax benefits obtained as a result of carrying out the planned activities. On examining the application for the ruling, the minister responsible for public finance affairs should decide whether the basic purpose of the activities described by the taxpayer is to obtain tax benefits as defined by the provisions introducing the anti-avoidance clause.

¹⁹ The Act of 10 February 2017 amending the Criminal Code Act and some other acts (Journal of Laws of 2017, item 244), hereinafter: “the VAT amendment Act”.

What gives rise to controversy is the fact that applying for a protective ruling (with a detailed description of the planned activities) may act as a sort of “auto denunciation” on the part of the taxpayers to the tax authorities.

Therefore, for the optimization to be safe for the taxpayers, it is recommended that such activities are reported to the tax authorities because the tax authorities not only have full knowledge of the optimization carried out but may also determine its extent.

Changes in the procedure of individual interpretations becoming binding

In connection with the reform of the National Tax Administration and the gradual implementation of the concept proposed by Deputy Prime Minister Morawiecki of introducing a package of facilitations for entrepreneurs, the procedures for issuing individual interpretations of the provisions of the tax law and for their becoming binding have been changed. Among other things, two interesting tools have been introduced for taxpayers, i.e. tax clarifications and the established interpretation practice of the minister responsible for public finance affairs.

Tax clarifications are general explanations of the provisions of the tax law and are related to the application of those provisions. The established interpretation practice is defined as clarification of the scope and method of applying the provisions of the tax law which predominates in the individual interpretations issued for the same actual statuses, or with reference to the same future events, and within the same legal status, during a given reporting period and in the 12-month period before the start of the reporting period. Complying with the established interpretation practice gives similar protection to complying with tax clarifications and is supposed to bring about effects similar to the protection which arises from holding an individual interpretation. The solutions described above show that despite the continually increasing, frequently arduous obligations imposed on taxpayers by the tax authorities with regard to

reporting, at the same time, there are also some improvements easing the situation of taxpayers in a given area.

In connection with the reform of the National Tax Administration, the procedures for issuing individual interpretations will change. From 1 March 2017, they will be issued by the Director of National Tax Information at the behest of the interested party. An application for an individual interpretation can relate to an existing actual state or to future events. Submitting an application will be possible using the new ORD-IN form.

4.5 Implementation of the AML Directive

By 26 June 2017, Poland is supposed to implement into its national legal system the Directive of the European Parliament and of the Council 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/40/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.²⁰

2006/70/EC. The coming into force of the Fourth AML Directive will result in introducing changes in the provisions of European law concerning counteracting money laundering and the financing of terrorism with reference to so-called obliged entities. In accordance with the information provided on the website of the Ministry of Finance, the purpose of the Fourth AML Directive is to prevent the EU financial system from being used for money laundering and the financing of terrorism, which should consequently help ensure the integrity, stability and reliability of the financial sector, and strengthen the internal market of the European Union.²¹

²⁰ DDz.U.U.E.L.2015.141.73 (hereinafter: “Fourth AML Directive”).

²¹ http://www.finance.mf.gov.pl/web/bip/ministerstwo-finansow/dzialalnosc/giif/aktualnosci/-/asset_publisher/SVp7/content/id/4870839

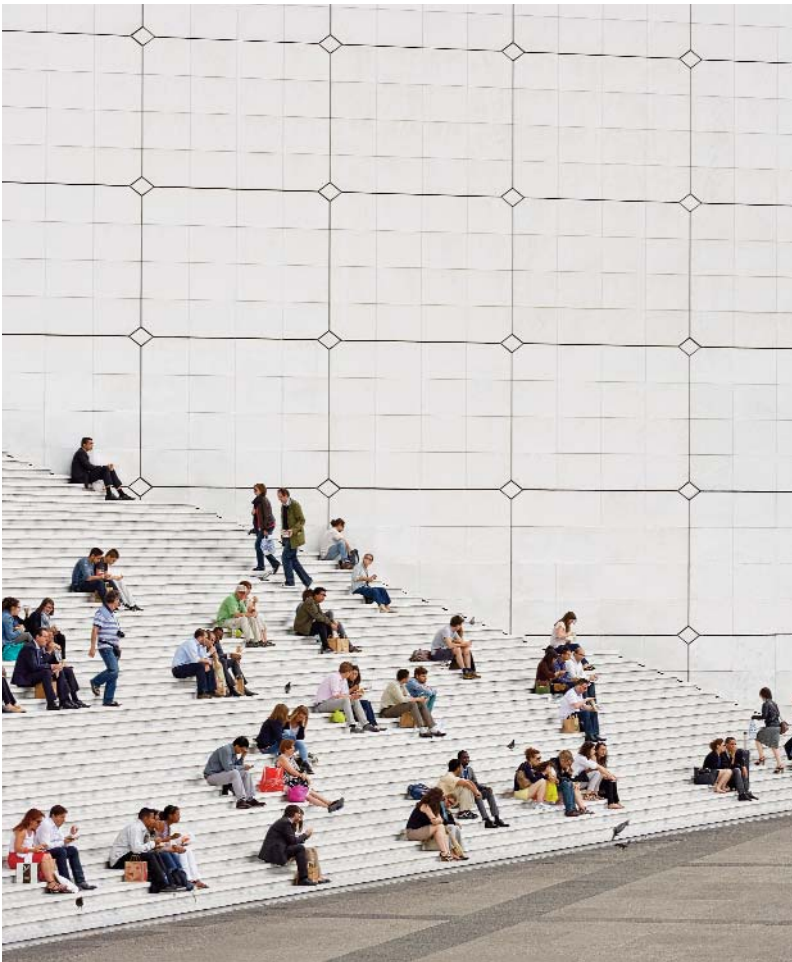
Extending the list of entities obliged to report and the range of disclosures

In line with the Fourth AML Directive, the list of entities obliged to provide information on beneficial owners will be extended. The list will comprise all legal persons, trustees and legal persons owning other legal entities (indirect ownership).²²

The method of identifying the beneficial owner also changes because the Fourth AML Directive elaborates on its definition. According to the expanded definition adopted in the Directive, the term beneficial owner means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted. In the case of corporate entities this means the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity.

The Fourth AML Directive contains a range of administrative sanctions and measures which the Member States will be able to apply against the obliged entities in order to guarantee their real compliance with the reporting obligations. This means that the obliged entities covered by the regulations of the Fourth AML Directive, in order to avoid criminal and administrative responsibility will have to verify their business partners more fully and scrupulously, and provide detailed information on their activities to the tax authorities.

The scope of the Fourth AML Directive covers, among other things, counteracting tax crimes. They have not been defined in the Directive but the directive indicates that they are included in the broad definition of “criminal activity”, which is defined. According to the preamble to the Fourth AML Directive, even though there is no harmonization of the definition of tax crimes in the national law of the Member States, Member States should allow, to the greatest extent possible, the exchange of information or the provision of assistance between EU Financial Intelligence Units. Member States should also guarantee to persons holding interests in respect of information concerning, among other things, tax crimes, that they would obtain guaranteed information about beneficial owners with due respect for data protection principles, whereas *“The exchange of information on cases identified by FIUs as possibly involving tax crimes should be without prejudice to the exchange of information in the field of taxation (...).”*²³



²² <http://forensic-blog.deloitte.pl/iv-dyrektwa-aml-najwazniejsze-zmiany-w-przepisach/>

²³ <http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32015L0849>

Last year the Ministry of Finance carried out

7,117

fiscal inspections.

4.6 Change in the activities of the tax authorities

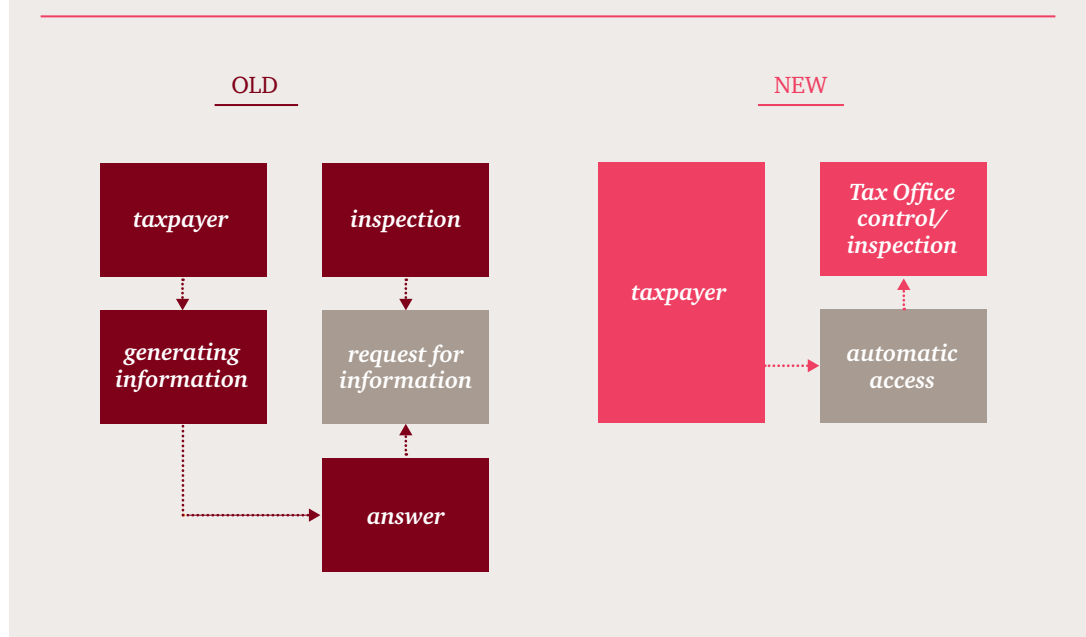
The change in the activities of the tax authorities with regard to inspections of the compliance of taxpayers operations with the law is visible not only in the regulatory scope but it is also noticeable in the practice of the tax authorities, which is manifested by the noticeably growing tendency for tax authorities to conduct intensified inspection activities.

Increased frequency and scope of inspections

According to the announcements on the website of the Ministry of Finance, the effect of Fiscal Inspection activities in the prior year (in the period covering three quarters of 2016) was more than PLN 1.5 billion remaining in the state budget, which compared with a similar period in the prior year constituted a considerable growth of inflows to the state budget (in the third quarter

of 2015 the respective amount was less than PLN 870 million).²⁴ However, in the opinion of the Ministry of Finance this fact is not related to the considerable increase in the number of inspections but to the increased effectiveness of entities properly selected for inspection and the greater precision of detecting the channels in which criminal groups operate, which the authorities are also more and more frequently managing to break up.²⁵ The reports of the Ministry of Finance suggest qualitative changes in fiscal inspections resulting in increases amounting to several dozen percent in both the number of decisions and the amount of the payments resulting from the decisions issued. The greatest success was recorded in stopping payments from the state budget of unwarranted VAT refunds. In the period covering the first three quarters of 2016, the amount entrepreneurs attempted to extort in this way was more than PLN 566 million (in a similar period of the prior year it was PLN 130 million), but the tax inspection bodies managed to retain the money in the state budget.²⁷

Change of the taxpayers' information retrieval model by tax authorities



²⁴ http://www.mf.gov.pl/ministerstwo-finansow/wiadomosci/aktualnosci/ministerstwo-finansow2/-/asset_publisher/M1vU/content/kontrola-skarbowa-najskuteczniejsza-od-lat?redirect=http%3A%2F%2Fwww.mf.gov.pl%2Fministerstwo-finansow%3Fp_p_id%3D101_INSTANCE_NsX0%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3D_118_INSTANCE_9Jwz__colu-mn-1%26p_p_col_count%3D1

²⁵⁻²⁷ Ibid.

According to a report published on the website of the Ministry of Finance²⁸ concerning fiscal inspection results, the total number of tax inspections completed in three quarters of 2016 was 7,117. In a similar period of the prior year, the number was 6,796, therefore there was an increase of 4.7%. The number of tax inspections was 4,168, therefore, it was slightly less than in the three quarters of 2015 (i.e. 4,200). As for the results of tax inspections concerning payments made to the state budget, according to the report in question,²⁹ payments to the state budget in consequence of decisions issued amounted to PLN 620.6 million, i.e. more than PLN 100 million more than in a similar period of the prior year (i.e. PLN 516.1 million), and the total amount obtained as a result of the activities of fiscal inspection in three quarters of 2016 was PLN 1,552 billion (PLN 869.4 million in a similar period of 2015).

A slightly different picture of the effectiveness of the Polish tax authorities is shown in the report entitled *“Tax Administration – Modernization Challenges and Strategic Priorities”*³⁰ prepared by the International Monetary Fund (“IMF”) in January 2015. The report indicates that the tax collection level in Poland is lower than in the majority of Member States of the European Union, and the effectiveness of VAT collection in Poland is even lower than in neighbouring countries which joined the European Union at the same time as Poland. The IMF emphasizes that despite an increase in VAT rates in 2011, since 2007 there has been a considerable decrease in net inflows from VAT which is the largest source of inflows to the state budget in Poland.³¹ Other problems

confronting the Polish tax administration include a drop in inflows from CIT expressed as a percentage of GDP in Poland, which has been recorded successively since 2008 and is even more considerable than in the case of VAT collectibility.

In the IMF report it was also observed that the VAT gap in Poland is growing rapidly. From 2005 until 2012 it increased from 9% to 24% of potential liabilities.³² The IMF also pointed to the lack of effectiveness in the operations of the tax administration in Poland. The poorer compliance of taxpayers with tax obligations is partly due to the delays in submitting PIT and CIT returns. Since 2011, there has also been a noticeable increase in tax arrears in four main groups of tax in Poland, i.e. VAT, PIT, CIT and excise duty, with a particularly strong growth in VAT arrears.³⁴ The Supreme Audit Office is also critical about the activities of the Polish tax administration.³⁵

According to the reports of the Ministry of Finance, in the immediate future, we should expect an increased number of inspections, focused mainly on detecting irregularities in VAT, especially in the context of the above-mentioned retention of unwarranted VAT refunds in the state budget.³⁶ The National Action Plan for Tax Administration for the years 2016–2020 prepared by the Ministry of Finance assumes that the main object of interest of the tax authorities in the immediate future will be sectors, such as finance and insurance services, tax and legal advisory services, e-commerce, trading in electronics, foodstuffs and tobacco, fuels, automotive industry and real estate.³⁷

²⁸⁻²⁹ Ibid.

³⁰ http://www.mf.gov.pl/documents/764034/3224234/20150505_Raport_MFW_PL.pdf

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ <http://www.rp.pl/Firma/310269951-Kontrole-podatkowe-ktore-branze-obejma-w-2016-roku.html#ap-2>

³⁶ http://www.mf.gov.pl/ministerstwo-finansow/wiadomosci/aktualnosci/ministerstwo-finansow2/-/asset_publisher/M1vU/content/kontrola-skarbowa-najskuteczniejsza-od-lat?redirect=http%3A%2F%2Fwww.mf.gov.pl%2Fministerstwo-finansow%3Fp_p_id%3D101_INSTANCE_NsX0%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3D_118_INSTANCE_9Jwz_colu_mn-1%26p_p_col_count%3D1

³⁷ <http://podatki.gazetaprawna.pl/artykuly/899991,fiskus-kontrole-w-2016.html>

Reorganization of the fiscal system from 1 March 2017 – formation of National Fiscal Administration

In connection with the Act of 16 November 2016 on National Fiscal Administration coming into force on 1 March 2017,³⁸ the organizational structure of fiscal administration in Poland is changing. One of the main aspects of the reform of National Fiscal Administration is the territorial consolidation of tax, fiscal and customs administration. The former structure will be replaced with one consolidated National Fiscal Administration composed of: 16 chambers of fiscal administration, 16 customs and fiscal offices with 45 branches of customs and fiscal offices and 143 customs departments and 400 fiscal offices.

The reform of the National Fiscal Administration also consists of changes in terms of competencies. The former competencies of the minister responsible for public finance affairs (the Minister of Finance) have been divided between the minister responsible for public finance affairs (the Minister of Finance) and the President of National Fiscal Administration. The competencies of the Minister of Finance – the bodies authorized to issue individual interpretations (i.e. directors of fiscal chambers) will be taken over by the Director of National Fiscal Administration. The competencies of the directors of fiscal chambers and directors of customs chambers will be transferred to the directors of fiscal administration chambers, and the competencies of the directors of fiscal inspection offices and heads of customs offices are transferred to heads of customs and treasury offices. Heads of fiscal offices maintain their former competencies.

Publication of income and income tax amounts

Recently, the Polish Ministry of Finance has been considering making the tax returns of Polish entities which earn the most revenue publicly available. There are plans to publish data, among other things, about revenue, tax-deductible costs, income, the tax base and tax due. It will also be possible to obtain information about the effective tax rate for a given company, i.e. the percentage share of duty in the profit before tax. An example of a state which has implemented the assumptions arising from the idea of tax transparency is Australia. The law of that country allows the following data of the largest entities (over 100 million Australian dollars in revenue) to be published: an Australian Identification Number, the amount of revenue of the given legal person, the value of taxable income and the value of tax paid. In Europe, the most far-reaching solutions in the matter of tax transparency are in place in certain Nordic countries (Denmark, Norway, Finland and Sweden) which, in principle, make available similar data. Nevertheless, the data is not always publicized, in certain cases it is available at the offices of the tax authorities. However, access to it is free – the authorities may not investigate who is asking a question nor the reason why.

³⁸ The Act of 16 November 2016 on National Fiscal Administration (Journal of Laws of 2016, item 1947), hereinafter: “the NFA Act”.

5. Need to prepare for the reality of tax transparency

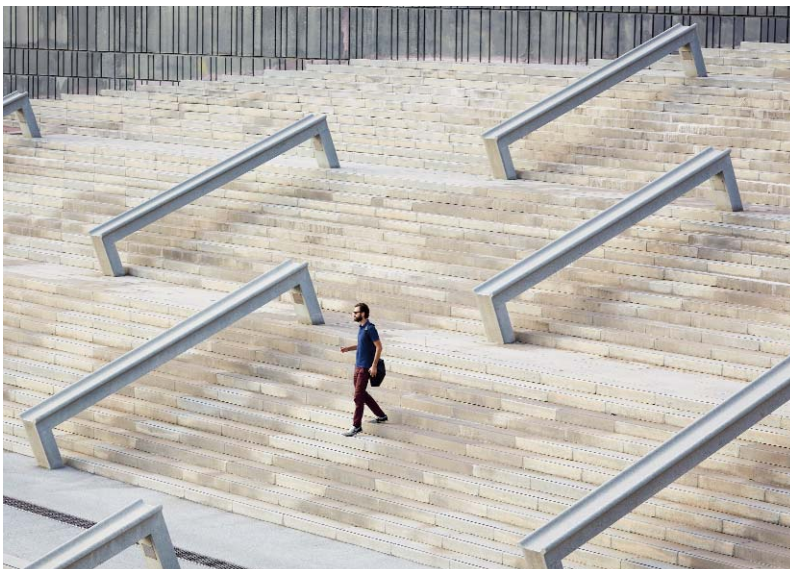
from 1 July 2016, the legislator placed an obligation on taxpayers to report data in the JPK format

5.1 Administrative burdens

The growing requirements imposed on taxpayers with regard to, among other things, reporting obligations result in higher administrative burdens for the taxpayers. One of the examples of such burdens are taxpayers' obligations related to the introduction of the institution of the Uniform Control File into the Polish legal system. On the one hand, from 1 July 2016, the legislator placed an obligation on taxpayers to report data in the JPK format, which in itself generates additional work related to compliance with the requirements of the taxpayers accumulating detailed data, and on the other hand, introducing the JPK involves the need for taxpayers to ensure that their former accounting systems are able to generate the JPK. Sometimes the obligations related to submitting the JPK will even involve a little further intervention into financial reporting because they may result in the need to change the existing rules for maintaining the books of account and even the method of documenting the commercial transactions conducted by taxpayers.

Another example are the burdens arising from changes in preparing transfer pricing documentation, which involve the obligation to broaden the scope of information submitted to the authorities. Such burdens will certainly include the need to prepare costly and time-consuming detailed comparative analyses, the preparation of which in a decided majority of cases will not be possible with the help of the human resources currently available but will require engaging external specialist service providers.

As a natural consequence of the above-mentioned situations, additional costs of conducting business activities will be generated—on the one hand, related to the costs of operating new accounting systems adapted to the JPK requirements, and on the other hand, it may be necessary to employ additional personnel to operate these systems and personnel responsible for business reporting in line with the new extended requirements related to the increased range of information to be submitted to the authorities.



5.2 The extent of permitted tax planning

According to the justification of the governmental draft of the Act on amending the Tax Code Act and some other Acts,³⁹ introducing the anti-avoidance clause: “Introducing the anti-avoidance clause into the Polish legal system will organize the tax law system, establishing the limits for permitted tax optimization, and strengthen the autonomy of the tax law vis-à-vis civil law”. According to the justification for the project, the legislator, wishing to offset the negative effects of implementing the anti-avoidance clause, has, at the same time, introduced the institution of protective rulings. The purpose of protective rulings is to create an opportunity for taxpayers to get to know the opinion of the fiscal administration about the planned or already undertaken transactions described in their application, which, due to their nature, could potentially result in the anti-avoidance clause being applied against them.

The question of the extent of permitted tax planning which would not result in negative consequences for the taxpayers is problematic because, although the provisions introducing the anti-avoidance clause are already effective, it is at present difficult to anticipate which direction the approach of the authorities will take as far as the practical application of these regulations is concerned. Therefore, it is worth remembering that when making decisions related to tax planning, it will be necessary to take into account the uncertainty as to how the solutions adopted will be treated by the tax authorities, which is additionally strengthened by the lack of an established practice in applying the anti-avoidance clause.

5.3 Possible facilitations

Due to the growing requirements for taxpayers and the efforts to ensure the greatest possible tax transparency, it is natural that some anxiety and uncertainty should appear among market participants. However, both the legislator and the tax authorities wish to meet the needs of the taxpayers and propose certain solutions in connection with the requirements placed on the taxpayers which are supposed to help ease their situation.

One such facilitation is the above-mentioned institution of protective rulings as a measure, which, at least to a certain extent, remedies the situation of the taxpayers and minimizes the problems related to implementing the tax-avoidance clause into the Polish legal system. Other facilitations would include, for example, the two solutions described above, introduced based on the Act on improving the business environment of entrepreneurs, which constitutes an element of the “One hundred changes for businesses” (“100 zmian dla firm”) package of facilitations for entrepreneurs proposed by Deputy Prime Minister Morawiecki, namely: the tax clarifications and the established interpretation practice by the minister responsible for public finance affairs where the main assumption is that taxpayers would comply with the established practice and therefore be ensured protection within the limits of the actual statuses covered by the said practice. The idea of the established interpretation practice is that taxpayers who did not apply for an individual interpretation of the tax law regulations but complied with the established practice should be entitled to the same protection as would be due to them had they obtained a positive individual interpretation.

³⁹ <http://orka.sejm.gov.pl/Druki8ka.nsf/0/F9586880528E8C3FC1257F86003475BD/%24File/367.pdf>

One of the interesting solutions which may help ease compliance with the increasing reporting requirements for taxpayers is the so-called horizontal monitoring model applied in the Dutch fiscal administration under which a taxpayer who decides to voluntarily cooperate with the tax authorities is responsible for the correctness of his tax settlements but he can also count on the support of the fiscal administration in this respect. It should be remembered that the factor conditioning such activity is fuller cooperation on the part of the taxpayers with the authorities based on mutual trust. An advantage of such activity is that problems are resolved on an ad hoc basis or appropriate solutions are even found that enable the prevention of any potential complications arising.

It is also worth mentioning the possibility of introducing the ADR, i.e. alternative dispute resolution procedures into the Polish tax system as a solution designed to ease the taxpayers situation in the context of the increased reporting requirements placed upon them. The experience of applying this type of procedure in the United Kingdom may serve as an example here. ADR is only a tool for reaching out-of-court tax agreements, which in British practice are the main instrument of the relationship between the taxpayer and the tax administration. The ADR procedure is a very informal type of mediation and relies mainly on the capabilities of the mediators who have so far obtained positive references for their professionalism and efficiency. The voluntary nature of the parties

participating in the procedure is emphasized. The pilot programme was a success because in the vast majority of disputes, a solution was reached. On the other hand, it should be noted that, so far, the ADR procedure has only been applied to cases which promised a successful solution using this option. All in all, the experience of ADR so far has been positive and resulted in savings both in terms of time and finances.⁴⁰

However, it should be remembered that implementing the ADR within the meaning it has in the United Kingdom and in the form adopted there, as well as adopting alternative methods of dispute solutions, in a wider context, into the Polish tax legal system could be accompanied by various problems. These would be problems of a legal nature, such as for example the need to carry out the reform by introducing a new substantive law structure, i.e. a statutory agreement between the taxpayer and the tax authority; and problems related to the system itself, such as the approach and manner of the functioning of the tax administration in Poland.⁴¹

⁴⁰ Raport PwC – Alternative Dispute Resolution – Wstęp do omówienia możliwości wprowadzenia alternatywnych metod rozwiązywania sporów podatkowych na gruncie polskiego prawa podatkowego; Por.: <http://www.hmrc.gov.uk/adr/>, Alternative Dispute Resolution for the Mass Market – Pilot Evaluation Report <http://www.hmrc.gov.uk/adr/pilot-evaluation-report.pdf>, Litigation and settlement strategy: <http://www.hmrc.gov.uk/practitioners/lss-intro.htm>, Resolving Tax Disputes, Commentary on the litigation and settlement strategy <http://www.hmrc.gov.uk/practitioners/lss-guidance-final.pdf> Resolving Tax Disputes, Draft Practical Guidance for HMRC Staff on the Use of Alternative Dispute Resolution in large or complex cases, draft of 27 June 2011 <http://www.hmrc.gov.uk/practitioners/adr-draft-guidance.pdf>, Tackling Tax avoidance, raport z marca 2011 r. http://cdn.hmctreasury.gov.uk/2011budget_taxavoidance.pdf

⁴¹ Ibidem.

6. Conclusions

The extent of tax reporting obligations is growing considerably, which is an emanation of the international trends arising from the prevailing economic and social climate, also in Poland. A measurable effect of this for entrepreneurs in Poland are the changes in the provisions of the law aimed at the fiscal authorities being able to “screen” entrepreneurs’ tax settlements to a maximum extent. In particular, it should be noted that fiscal authorities are attempting to shift the burden of obtaining properly structured information about taxpayers to financial institutions, which under various legislative initiatives are obliged to examine the status of their customers and business partners more and more carefully, and report information on their assets and income (as is the case with anti-money laundering regulations).

Therefore, entrepreneurs should already now be aware of the direction of the changes and strive to implement processes to ensure compliance with the new operational tax requirements.

The fiscal authorities are certain to obtain information about them – partly from themselves but also from their business partners and customers as well as from professional institutions providing services (such as financial services) to them. In consequence, it is only a question of time that the tax authorities will be able to identify which enterprises do not have appropriate processes in place in this scope. Such an accusation will certainly result in suspecting that such entrepreneurs are concealing errors in their tax settlements or even tax crimes on the operational side (their own or those of their business partners). Therefore, at present, it should be of crucial importance to entrepreneurs to ensure compliance with operational tax requirements.

The legislator, on the other hand, should consider introducing changes that would recompense increased administrative burdens and facilitate the on-going provision of information to those taxpayers who are ready and willing for fair cooperation and transparency.



Contact



Mariusz Ignatowicz

Partner

E: mariusz.ignatowicz@pl.pwc.com

T: +48 502 184 795



Jan Tokarski

Director

E: jan.tokarski@pl.pwc.com

T: +48 502 184 651



Marcin Jaworski

Senior Manager

E: marcin.jaworski@pl.pwc.com

T: +48 502 184 838



Marcin Wesołowski

Senior Consultant

E: marcin.wesolowski@pl.pwc.com

T: +48 519 506 415

