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In this Issue

Introduction

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The end of 2019 and the start of 2020 is and will be a busy time for VAT payers. We have not had such a large number of changes to VAT regulations in a long time. Taxpayers are finding it difficult to make their accounting processes compliant with the new changes, especially because they are not being introduced through a single piece of legislation, but rather through a maze of new regulations. Importantly, many of these changes require taxpayers to adjust their finance and accounting systems. This means taking steps early enough to make sure that taxpayers are prepared to calculate and report VAT without problems once the new regulations become effective.

This issue of Frontiers in Tax looks at the key changes in VAT law, and all the information on the new VAT regulations has been provided in a condensed and easily digestible way.

The first changes in 2020, effective as of 1 January 2020 and influenced by EU law, will be made with regard to documenting intra-Community transactions for the purposes of the VAT rate of 0%.

On 1 April 2020, a matrix of VAT rates will be introduced, resulting in the VAT rates for certain goods and services being raised or reduced. As a result, as of 1 November 2019, taxpayers can apply to the Director of the National Tax Information Service for what is known as a Binding VAT Rate Statement ("BRS"), a document against which they can verify the correctness of the VAT rates they apply.

Also as of 1 April 2020, new formats of the JPK file will be introduced, initially only for large companies: JPK_V7M for taxpayers reporting VAT on a monthly basis and JPK_V7K for those reporting on a quarterly basis.

Read on to learn more about the upcoming changes in law.

I hope you find this issue of Frontiers in Tax an enjoyable read.

Binding VAT Rate Statement

As of 1 November 2019, taxpayers can apply to the Director of the National Tax Information Service for what is known as a Binding VAT Rate Statement ("BRS").

A BRS is an official decision classifying a particular product or service in accordance with the Combined Nomenclature (CN), the Polish Classification of Buildings and Other Structures (PKOB) or the Polish Classification of Goods and Services (PKWiU). The purpose of a BRS is to provide protection for taxpayers regarding the classification of their goods and services and, consequently, the correctness of VAT rates. Each BRS will contain:

1. a description of the good(s) and/or service concerned;

2. 2. details of the classification of the good(s) or service, specifying the section, item, subsection or CN code, or the section, part, group, class, category, subcategory or item of the PKWiU; and

3. the correct VAT rate to be applied.

Importantly, a BRS may also classify the good(s) and/or service concerned for the purposes of regulations other than VAT rate regulations, e.g. for the purposes of the split payment mechanism.

Also, a BRS application may cover what is referred to as "combined performance". According to established views based on judicial decisions, "combined performance" is defined *as two or more activities performed by a taxable person which are so closely interlinked that they form a single and indivisible business event which, if divided, would be artificial in nature*. Taxpayers found it very difficult to determine the correct PKWiU classification code and, as a result, the correct VAT rate. Tax authorities refused to specify classification codes in "individual tax interpretations" and instead told taxpayers to contact the national statistics office. The statistics office determined the classification codes, but on the basis of public statistics standards rather than specific VAT regulations. The new regulations requiring the Director of the National Tax Information Service to issue BRS's (which must include the correct PKWiU or CN classification code and the correct VAT rate) can be regarded as a step in the right direction, also as regards the "combined performance" concept. Each BRS application can be accompanied by supporting documents regarding the good(s) and/or service concerned, such as photographs, instruction manuals, approval certificates etc., which may make it easier for the authority to issue a correct classification.

Although BRS applications can be made as of 1 November 2019, BRS's will not be binding upon tax authorities before 1 April 2020, with a few exceptions (such as certain books and e-books, magazines, newspapers or dailies). The reason for this deferred binding effect of BRS's is that they are to be issued in connection with the introduction of a new matrix of VAT rates.

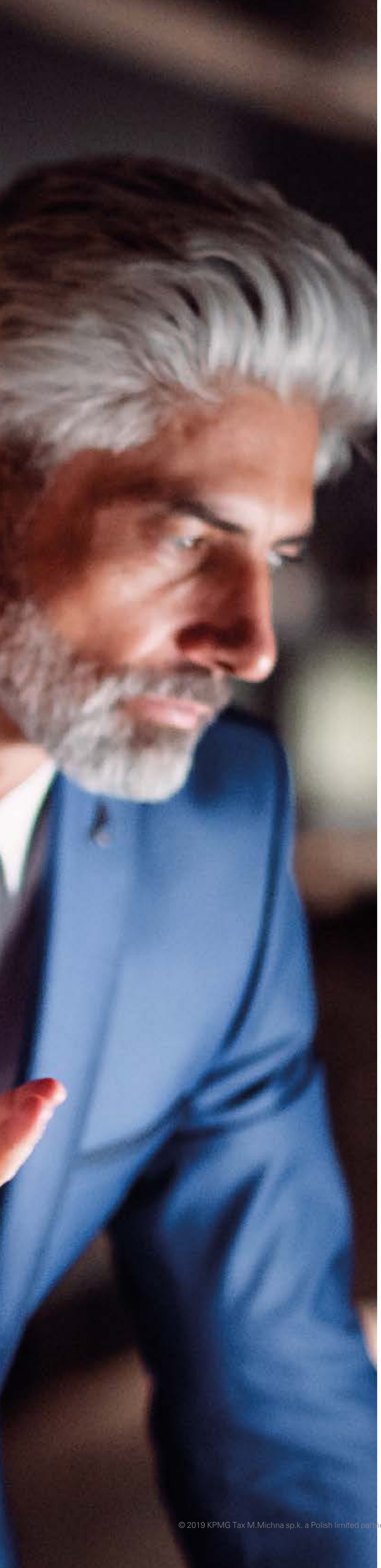
A new matrix of VAT rates

A new matrix of VAT rates will apply as of 1 April 2020. As a result, the rules of classifying goods and services for VAT purposes will be changed. The currently applicable Polish Classification of Goods and Services (PKWiU) of 2008 will be replaced, for services, with a PKWiU version of 2015 and, for goods, with the Combined Nomenclature (CN). The VAT rates for certain goods and services will be raised or reduced.

For example, the VAT rate for homogenised and diet foodstuffs, tropical and citrus fruit, certain processed spices (e.g. pepper, nutmeg or thyme), as well as bread and biscuits of any kind, will be reduced.

The goods for which VAT rates will be raised include, for example, seafood, ice for food-related purposes and other cold storage purposes, as well as unprocessed spices such as caraway, saffron, turmeric or nutmeg.

The main purpose of the changes, as described in the formal reasons for the draft Bill proposing the new matrix of VAT rates, is to simplify the system. *"The years of practical application of the PKWiU*



A new matrix of VAT rates will apply as of 1 April 2020. As a result, the rules of classifying goods and services for VAT purposes will be changed.

classification show that the Polish system of VAT rates that is based on this classification is extensive and complicated, leading to substantial challenges faced by businesses. (...) The system as it is today is ineffective and criticised for its complexity and lack of protection for taxpayers as regards their application of the VAT regulations based on the PKWiU classification (this lack of protection results from the fact that the formal classification opinions issued by the Polish national statistics office are not binding)".

The proposed changes are expected to help simplify the system of VAT rates to ensure its simplicity and clarity and, as a result, to improve the conditions for doing business.

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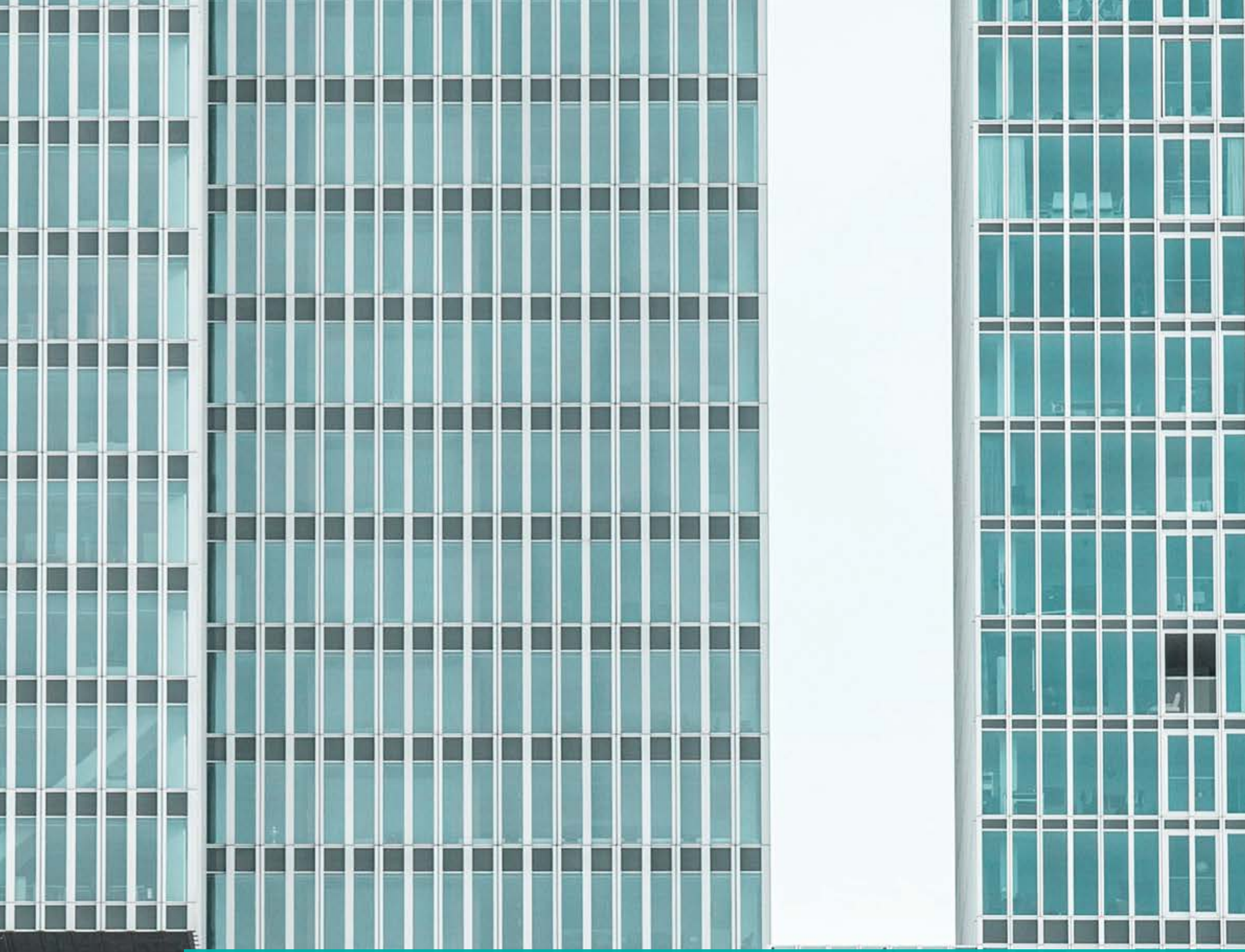

Records required to apply the VAT rate of 0% to intra-Community supplies

As of 1 January 2020, certain amendments to regulations influenced by EU law will become effective with regard to international transactions. The purpose of the changes is to make VAT accounting easier for taxpayers. The changes will include the requirements for documenting intra-Community transactions for the purposes of zero-rated supplies.

The question of how intra-Community transactions should be documented has always been a source of practical problems. One of the main requirements for eligibility to charge VAT at the rate of 0% in the case of intra-Community supplies is for the taxable person to be in possession of documents confirming that the taxable goods have been transported from one member state and delivered to an acquirer in another member state. The Polish VAT regulations, specifically the provision of section 42(3) of the VAT Act, define such documents to include shipping documents that clearly show the goods have been delivered to their destination in an EU member state, and a packing list. The VAT Act also contains a list of supporting documents that may be used as evidence if the shipping documents and the packing list do not confirm clearly the delivery of the goods to an acquirer in another EU member state (Section 42(11) of the VAT Act).

In the past, tax authorities have argued that a CMR document (particularly if it is signed by the consignee in section 24) is essential for eligibility to apply the rate of 0% and that where such a document is not available, even if alternative documents prove that the goods have been delivered to a destination outside the territory of Poland, the rate of 0% must not be applied. That was helped by the Supreme Administrative Court's resolution of 11 October 2010 (I FPS 1/10). The Court said that for a taxable person to be eligible to apply the rate of 0% to an intra-Community supply of goods, it is sufficient for that person to be in possession of only some of the documents specified in Section 42(3) of the VAT Act, supported by the documents specified in Section 42(11) of the VAT Act and/or or any other documents if all of them confirm that the goods have been transported from Poland and delivered to an acquirer based in another EU member state. Based on that resolution, it has become a practice that the unavailability of a CMR document (or, if available, a CMR document not signed in section 24, but supported by other documents) does not automatically mean problems with charging VAT at the rate of 0% in the case of intra-Community supplies.

Given the EU-level changes regarding the documentation of intra-Community supplies, where one of the documents required for eligibility to charge VAT at the rate of 0% is a signed CMR document, it is worth considering whether the established practices based on decisions of Polish courts confirming that eligibility to apply the rate of 0% to intra-Community supplies may be based on other documents will continue to be respected by tax authorities.

The new provisions on the documentation of intra-Community supplies are based on Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions ("Regulation"). The provisions of the Regulation do not require the enactment of a statute to apply in Poland, as these provisions are directly applicable.

According to the Regulation, an exemption (the rate of 0% in Poland) for intra-Community supplies may be applied on the presumption that the goods have been transported from one EU member state to another. The Regulation focuses on documents issued by parties other than the acquirer and the vendor. The new provisions require that documents that may be the basis for the presumption be issued by two different parties that are independent of each other, of the vendor and of the acquirer. Therefore, transport and logistics companies will play a major role in ensuring compliance with the requirements of the presumption. The presumption will, however, not apply if the vendor or the acquirer transport the goods using their own means of transport (i.e. the requirements for the presumption will not be met).

For example, the presumption will apply if the taxable person is able to prove that the goods have been transported to another EU member state using two documents, such as a CMR document signed in section 24 and a bank document confirming the payment for the transport of the goods. See Box 1 and Box 2.

Box 1.

If the transport service is ordered by the vendor

- The vendor must prove that the goods have been dispatched or transported by the vendor or a third party for the vendor, **and**
- the vendor is presumed to be in possession of at least two consistent documents from Group A or one document from Group A and one from Group B, issued by two different parties that are independent of each other, of the vendor and of the acquirer.

If the transport service is ordered by the acquirer

- The vendor is presumed to be in possession of a written statement from the acquirer, stating that the goods have been dispatched or transported by the acquirer, or by a third party on behalf of the acquirer, and identifying the member state of destination of the goods, **and**
- the vendor is presumed to be in possession of at least two consistent documents from Group A or one document from Group A and one from Group B, issued by two different parties that are independent of each other, of the vendor and of the acquirer.

If the requirements for the presumption are met, the taxable person will have the certainty that they may lawfully apply the rate of 0% to their supplies. The burden of proving that the goods have not been transported from one EU member state to another, to rebut the presumption, will rest on the relevant tax authority.

What is important is that the new EU provisions introducing the presumption do not mean that the transport of the goods may not be proved under the applicable provisions of domestic law.

Box 2.

Group A

- Documents relating to the dispatch or transport of the goods, such as
    - a signed CMR document,
    - a bill of lading,
    - an invoice for the carriage of the goods by air or an invoice issued by a goods carrier.

Group B

- an insurance policy with regard to the dispatch or transport of the goods, or bank documents proving payment for the dispatch or transport of the goods;
- official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the EU member state of destination;
- a receipt issued by a warehouse keeper in the EU member state of destination, confirming the storage of the goods in that member state.

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Given the EU-level changes regarding the documentation of intra-Community supplies, where one of the documents required for eligibility to charge VAT at the rate of 0% is a signed CMR document, it is worth considering whether the established practices based on decisions of Polish courts confirming that eligibility to apply the rate of 0% to intra-Community supplies may be based on other documents will continue to be respected by tax authorities.

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This is confirmed by the reasons for the amendments to the VAT Act. The document with the reasons reads that *"failure to meet the presumption requirements does not automatically mean that the rate of 0% will not apply. In such a case, the vendor has an obligation to prove otherwise, in accordance with the VAT Act, that the requirements for eligibility to apply the rate of 0% are met."*

The same view is expressed in the draft Explanatory Notes of the European Commission (Explanatory Notes on 2020 Quick Fixes", GFV No. 89).

Consequently, the new EU provisions should not affect the scope of documents required by Polish tax authorities as evidence of the taxable person's eligibility to apply the rate of 0% in the case of intra-Community supplies. It would, however, be advisable for the taxable person to review their records in terms of whether thy meet the Polish statutory requirements, particularly if the records do not include a signed CMR document. This is because tax authorities may adopt a more restrictive approach in this regard.

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The acquirer's EU VAT number as a requirement for eligibility to charge VAT at the rate of 0% on intra-Community supplies

According to the draft Bill of 7 October 2019 amending the VAT Act by implementing the provisions of Council Directive (UE) 2018/1910 of 4 December 2018, a taxable person, as of 1 January 2020, will not be eligible to charge VAT at the rate of 0% unless the acquirer provides the vendor with its EU VAT number and unless the vendor includes the supply in their recapitulative statement.

The requirement for the acquirer to provide its EU VAT number will be a substantive requirement for eligibility to charge VAT at the rate of 0% on intra-Community supplies. It is important to note that such a requirement was provided for in Polish law in the past, i.e. before April 2013. The law at that time was that a taxable person was eligible to charge VAT at the rate of 0% only if the supply was made to an acquirer having a correct and valid EU VAT number and only if that number was shown on the invoice for the supply.

Later, based on decisions of the Court of Justice of the European Union and of Polish courts that considered the provision of an EU member state as a formal requirement for eligibility to apply the rate of 0% (if this requirement was not met, but the substantive requirements (i.e. that the goods must have been transported from one EU member state to another) were met, the taxable person was still eligible to apply that rate), the Polish regulations were modified and the requirement to provide the acquirer's EU VAT number on the invoice as a substantive requirement for eligibility to apply the rate of 0% was removed (the provision of that number is now a formal requirement, i.e. an essential part of the invoice).

The amended EU provisions impose the obligation on the acquirer to provide its EU VAT number as a requirement for eligibility to charge VAT at the rate of 0%. If the acquirer's EU VAT number is not stated on the invoice, the supply will have to be regarded as a domestic supply in Poland.

However, the provisions do not make it clear how the EU VAT number should be provided by the acquirer. A useful document when interpreting the new provisions may be the Explanatory Notes of the European Commission – "Explanatory Notes on 2020 Quick Fixes" (GFV No. 89), ("European Commission's Explanatory Notes"). According to the draft Explanatory Notes, if the acquirer's EU VAT number is stated on the invoice, it will be sufficient proof that the number has been provided to the vendor.

The European Commission's Explanatory Notes read that if the acquirer is in the process of obtaining

an EU VAT number when the invoice is issued by the vendor, the vendor will have to apply a domestic VAT rate. When the acquirer is issued an EU VAT number, the vendor will have the right to correct the invoice.

It should also be remembered that the application of a domestic VAT rate (because the acquirer has no EU VAT number) will not cancel the acquirer's potential obligations to account for the intra-Community acquisition in the member state of destination.

Another substantive requirement for eligibility to apply the VAT rate of 0% for intra-Community supplies is for the vendor to include the transaction in its recapitulative statement. The law as it is today requires intra-Community transactions to be included in the recapitulative statement. However, no errors or deficiencies in this regard affect the vendor's eligibility to apply the rate of 0%. When the law is amended as proposed, if the vendor's recapitulative statement contains an error, the vendor will be subject to the penalty of having to apply a domestic VAT rate. This may be avoided, as an exception, if the taxable person duly explains, in writing, the error to the head of the relevant tax authority.

The document with the reasons for the proposed changes to the VAT Act refers to the following examples of situations where tax authorities will consider the vendor's explanation as due:

- the vendor has included the intra-Community supply in its recapitulative statement for an incorrect period;
- the vendor has erroneously declared the value of the supply and that error was intended;
- the vendor erroneously provided the acquirer's invalid tax identification number, e.g. the acquirer's tax number was changed as a result of the acquirer's restructuring;

The same situations are referred to in the draft Explanatory Notes of the European Commission.

Given the upcoming changes, it is crucial for taxable persons to verify whether the EU VAT numbers provided by their customers are correct, valid and recorded in their invoicing systems. It would, therefore, be advisable for vendors to contact their customers to confirm the correctness and validity of their EU VAT numbers. If the acquirer's EU VAT number is not stated on the vendor's invoice, the vendor will have to apply a domestic VAT rate to the supply. Although the law does not require expressly that the only way to provide the acquirer's EU VAT number is to include it on the invoice, this seems to be the easiest way to prove that the acquirer has actually provided that number to the vendor.

Care should also be taken to comply with reporting obligations, i.e. the obligation to submit correct recapitulative statements by the specified deadlines.

Given the upcoming changes, it is crucial for taxable persons to verify whether the EU VAT numbers provided by their customers are correct, valid and recorded in their invoicing systems. It would, therefore, be advisable for vendors to contact their customers to confirm the correctness and validity of their EU VAT numbers. If the acquirer's EU VAT number is not stated on the vendor's invoice, the vendor will have to apply a domestic VAT rate to the supply.

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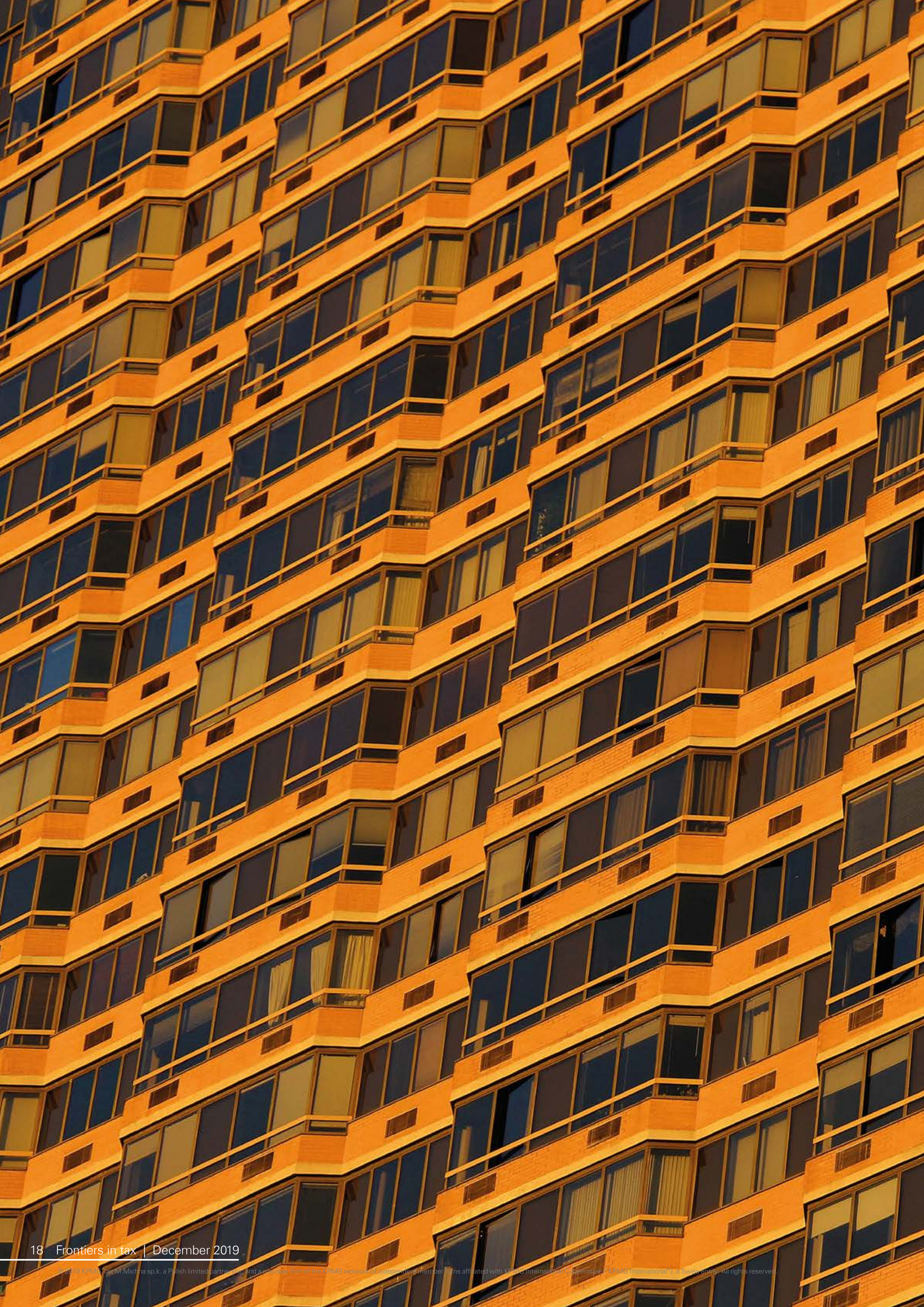


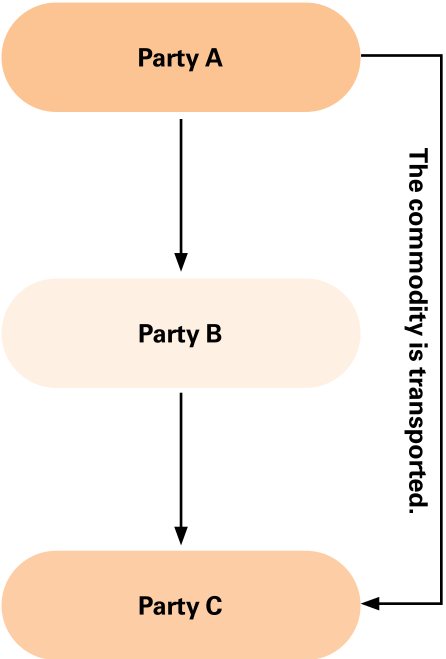
New regulations regarding intra-Community chain transactions

As of 1 January 2020, certain amendments to regulations influenced by EU law will become effective with regard to international transactions. One of the amendments is expected to simplify the treatment of chain transactions for VAT purposes.

Introduction

A chain transaction is one where at least three entities (let us call them A, B and C) are involved in the sale of a commodity: A issues an invoice to B, and B issues an invoice to C for the same commodity, but the commodity is shipped directly by A to C. Although the goods are transported only once, each of the entities involved in such a transaction is required to declare the supply of goods for VAT purposes (in such a chain transaction, there are two supplies of the same commodity; see Figure 1.).

Figure 1.



The transport of the commodity must be ascribed to one of the supplies in the chain so that the VAT implications of the transaction can be determined for both supplies (the supply to which the transport is ascribed is referred to as a movable supply (or transaction)). The ascription of the transport of a commodity to one of the supplies is particularly important for cross-border chain transactions, where the commodity is moved between different countries. This is because only a movable supply may be considered as an intra-Community supply of goods (where goods are transported between EU countries) and, as such, taxable at the rate of 0% for VAT purposes. All the other supplies within the same chain are taxable at local rates (i.e. the rate that applies in the country of shipment for the supplies occurring before the movable supply, or the rate that applies in the country of destination for supplies occurring after the movable supply).

In order to identify the movable supply in a chain of supplies, it is necessary to identify the party responsible for making the transport arrangements in the chain. If the transport of a commodity is arranged for by A, then the supply made by A will be considered as the movable supply (for example, if a commodity is transported from Poland to France, A will report an intra-Community supply in Poland, B will report an intra-Community acquisition of goods in France and a domestic supply in France to C, unless a simplified solution applies in France, of course). However, if C collects the commodity (or has it collected by a carrier) from A, then the movable supply will be the supply made by B to C (for example, if a commodity is transported from Poland to France, A will report a domestic supply in Poland to B, B will report an intra-Community supply in Poland, a C will report an intra-Community acquisition in France).

On the practical side, the most complicated situation is the one where the transport is arranged for by the party in the middle of the chain, i.e. B. The law as it stands today (Section 22(2) of the VAT Act) is that the transport is ascribed to the supply made by A to B, unless the terms of the supply are such that the transport of the commodity should be ascribed to the supply made by B to C. However, the law does not define the terms of delivery that determine such ascription of the transport.

The practice today

The ascription of the transport of a commodity where the transport is arranged for by B has been a highly controversial issue in Poland and other EU countries. What is more, the fact that different member states address the problem differently may result in VAT being charged twice or not at all in the case of supplies made as part of chain transactions (especially because the VAT Directive offered no guidelines in this regard).

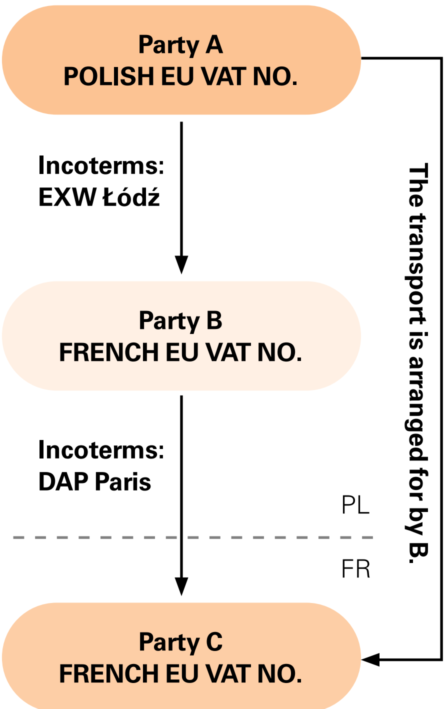
The Court of Justice of the European Union has looked into this issue several times before. In its judgment of 16 December 2010 (Case C-430/09, Euro Tyre Holding BV), the CJEU formulated two conditions that must be fulfilled jointly for the transport to be ascribed to the supply made by A:

1. B expresses its intention to transport the goods to another member state and presents its VAT identification number attributed by that other state;

2. the right to dispose of the goods as owner between B and C is transferred to the person acquiring the goods in the member state of destination.

In practice, it is recognised that the right to dispose of the goods as owner is transferred in the member state in which the benefits and burdens related to the goods and the risk of accidental loss of or damage to the goods are transferred to the acquirer as agreed upon by the parties and given the way that the transaction was actually conducted. It may be useful to refer to Incoterms for the purpose of identifying such a member state. It is often the case that the second condition is conclusive.

Figure 2.

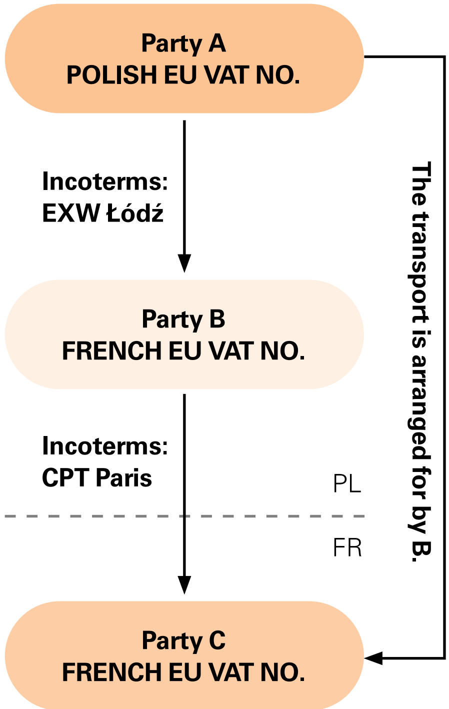


> As of 1 January 2020, certain amendments to regulations influenced by EU law will become effective with regard to international transactions. One of the amendments is expected to simplify the treatment of chain transactions for VAT purposes.

In the example illustrated in figure 2, the transport might be ascribed to the supply made by A (this supply would be an intra-Community supply in Poland, taxable at the rate of 0%, if other formal requirements are fulfilled), because the right to dispose of the goods as owner would be transferred to B in Poland, but to C in France (as indicated by DAP Incoterms rule, which means that the buyer assumes no risks or obligations related to the goods until the goods are collected at their destination, when the transport is completed).

In the example illustrated in Figure 3, the transport might be ascribed to the supply made by B (meaning that the supply from A to B would be a domestic supply in Poland, taxable at a Polish VAT rate), because the right to dispose of the goods as owner would be transferred in Poland both from A to B and from B to C (as indicated by the Incoterms CPT rule, which means that the seller pays the freight up to the specified destination, but the risks related to the goods are transferred to the buyer when the goods are collected by the first carrier; therefore, it is the country where the goods are collected by the first carrier, not the destination up to which the freight is paid for by the seller, that is the place where the right to dispose of the goods as owner is transferred).

Figure 3.



The above examples are obviously a simplification, as there is still some room for interpretation and, therefore, certain doubts as to the ascription of the transport (if only because of the interpretation of the expression "transport arrangements" or in relation to circumstances indicating the "intention to transport the goods to another member state").

Amendments to the VAT Directive and national legislation

Such doubts may be reduced by the provisions adopted by the Council of the European Union on 4 December 2018 amending the VAT Directive, which are to be implemented with effect from 1 January 2020 (the Bill implementing the amended directive in Polish legislation was published on 7 October 2019).

According to the proposed law, in the case of a chain supply that involves the transport of goods between EU member states, the dispatch or transport of the goods is ascribed only to the supply made to the intermediary operator. However, by way of derogation from this rule, the dispatch or transport is ascribed only to the supply of goods by the intermediary operator where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported. The 'intermediary operator' means a supplier within the chain other than the first supplier in the chain who dispatches or transports the goods either himself or through a third party acting on his behalf.

It seems, therefore, that as of 1 January 2020, in both the example in Figure 2 and that in Figure 3, the transport should be ascribed to the supply made by A (this supply will be an intra-Community supply in Poland). This classification of the two chain transactions may be changed if B communicates its Polish VAT number to A. In such a case, A will have to apply a Polish VAT rate to its supply, and B will report an intra-Community supply in Poland.

This, however, may raise doubts, particularly as to the assumption that B is the intermediary operator in both cases. It is obvious that neither A nor C may be considered as the intermediary operator, but it will not always be correct to assume that the intermediary operator will be B in such a chain transaction. This is because it is not enough to be both the vendor and the acquirer in a chain transaction to meet the definition of intermediary operator. It is also necessary to transport the goods or have the goods transported by a carrier.

It is then crucial to know what it means to "dispatch or transport goods". This expression cannot be equated with bearing the cost of the transport. It has been the practice of tax authorities, when identifying the party responsible for transport arrangements within a chain transaction, to determine which party arranges for the transport operationally (i.e. by contacting the carrier, arranging the date of collection, the place of collection, the size and weight of the goods to be transported, the method of loading, the requirements to be met by the vehicles to be used, etc.) rather than which party is invoiced by the carrier. Under the new law, another aspect may be crucial. This is indicated by the draft Explanatory Notes of the European Commission. The document contains interpretation guidelines on how to interpret EU legislation, which are issued by the Directorate-General for Taxation and Customs Union. It has no legal effect, but is an important argument in favour of interpreting EU legislation in a particular way, as it is agreed upon by the finance ministers of the EU member states.

In the draft Explanatory Notes it was pointed out that, as a rule, ascribing the transport to a given supply in the chain should be based on determining which entity assumes the risk of loss of or damage to the goods while they are being transported. It has been noted however that this criterion might lead in some cases to certain practical difficulties in identifying the intermediary operator. There may be a situation where B has the goods transported by a carrier, but the terms of delivery are such that the risk of loss of or damage to the goods is transferred to C only when the goods are collected by the carrier (meaning that C assumes the risk while the goods are being transported). If the criterion of risk during transport was the only to be applied in such a chain transaction, none of the entities would meet the definition of intermediary operator and, therefore, the presumptions discussed above would not apply.

According to the Explanatory Notes, in such cases the most suitable criterion would be that of the taxable person within the chain that transports the goods himself or makes the necessary arrangements with a third party for the transport of the goods, concluding a contract with that third party. This unless the taxable person in question can

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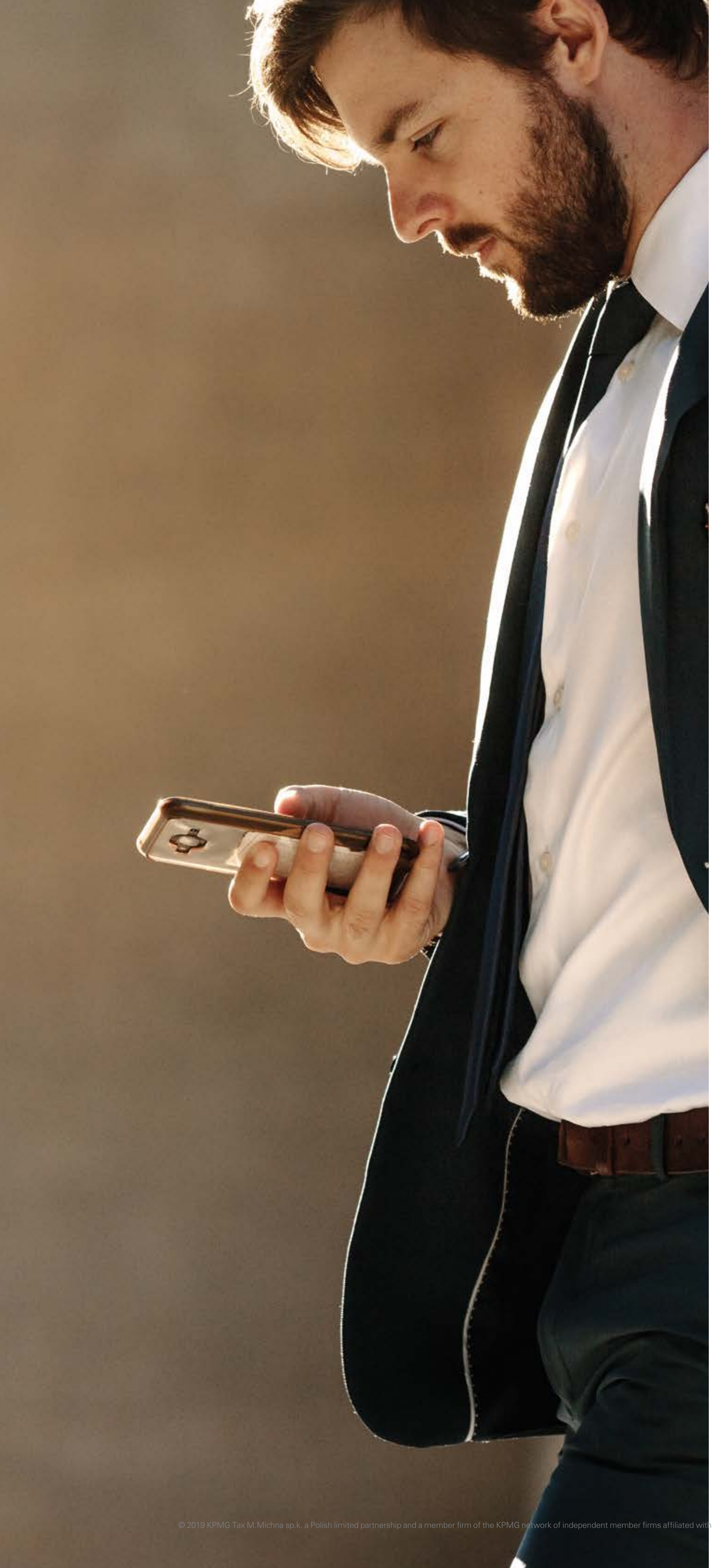

prove that in fact the transport was made, or the contract concluded, on behalf of another taxable person in the chain who was in fact bearing the risk of accidental loss of the goods during the transport operation.

If the above is applied to the examples provided above, it can be concluded that the new provisions will indeed apply to the chain transaction illustrated in Figure 2, as well as in Figure 3, assuming that in both cases B concluded a contract for transport on his own behalf. It seems to be a reasonable approach, which may significantly simplify the analysis, considering the fact that the criterion of concluding a contract with a carrier is objective and easy to verify. However it is currently difficult to predict how the Polish tax authorities will interpret the new provisions. It cannot be ruled out that their interpretation of the expression "dispatch or transport goods" will be different from that which is adopted in the Explanatory Notes of the European Commission (or that the final version of the Explanatory Notes of the European Commission will be different – it has already been amended once in a way impacting the chain transactions).

In conclusion, the new provisions will certainly help develop uniform rules for the treatment of EU chain transactions for VAT purposes. The fact that for the first supply to be considered as a domestic supply, it will be sufficient for the intermediary operator to present its VAT number, is good news, as the intermediary operator will, in many situations, will not have to register and report VAT in the country of destination. There are, however, certain aspects of the new provisions that raise doubts and may result in disputes with tax authorities.

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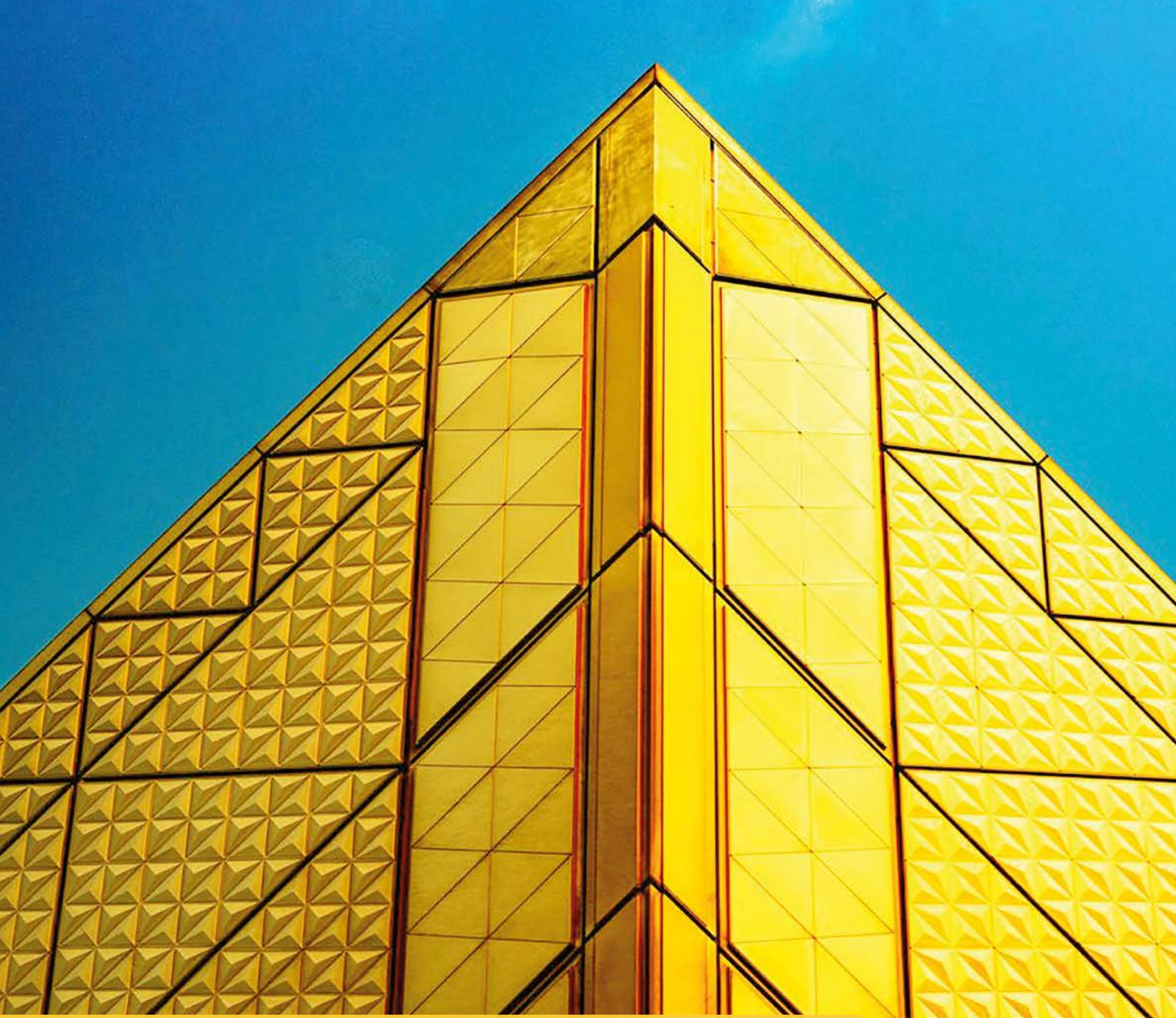

Call-off stock arrangements

According to the draft Bill of 7 October 2019 amending the VAT Act by implementing the provisions of Council Directive (UE) 2018/1910 of 4 December 2018, new provisions will become effective on 1 January 2020 to introduce call-off stock arrangements that will replace the present consignment stock simplifications.

As a rule, the movement of a taxable person's own goods, by that person, between EU member states is considered as an intra-Community supply of goods in the member state of dispatch and an intra-Community acquisition of goods in the member state of destination by the same taxable person. However, the VAT Act provides for several exceptions from this rule, e.g. in the case of goods moved to consignment warehouses.

The rules for consignment warehouses are as follows:

- A moves its goods to another EU member state where the goods are stored by B in a specific place, i.e. a consignment warehouse, and are still owned by A;
- B collects the goods from the consignment warehouse on an as-needed basis, which results in the ownership of the goods being transferred from A to B,
- When B collects the goods from the consignment warehouse, A will report an intra-Community supply of the goods in the member state from which they were dispatched to the consignment warehouse and B will report an intra-Community acquisition of the goods in the member state of acquisition.

If the above procedure is followed, A will not have to report an intra-Community acquisition of the goods in the member state of destination and a domestic supply to B. As a result, no registration for VAT purposes is required in the member state where the consignment warehouse is located.

The law as it stands now provides for several requirements that considerably restrict the application of the above simplification. Moreover, under the VAT Directive, EU member states are free to implement such regulations domestically. The result is either inconsistent regulations across the EU or the lack of regulations in certain member states. As of 1 January 2020, new rules are to be introduced by the EU, and they should be implemented as a standard in all EU member states. In Polish law, the new rules are introduced in a draft Bill of 7 October 2019 to amend the VAT Act. The Bill proposes to add a new chapter with provisions regarding call-off stock arrangements. The following is a comparison of the existing rules and the proposed provisions.

"As of 1 January 2020, new rules are to be introduced by the EU, and they should be implemented as a standard in all EU member states. In Polish law, the new rules are introduced in a draft Bill of 7 October 2019 to amend the VAT Act. The Bill proposes to add a new chapter with provisions regarding call-off stock arrangements."

Consignment stock warehouse (until 31 December 2019)	Call-off stock warehouse (from 1 January 2020)
A may not be registered for VAT purposes in the member state where a consignment warehouse is located.	A may be registered for VAT purposes in the member state where a call-stock warehouse is located, but may not be established or have a fixed establishment in that member state.
The goods stored in a consignment warehouse must be intended for B's production or services, not for sale by B.	B's use of the goods is unlimited, meaning that B is free to resell the goods.
The consignment warehouse must be operated by B.	A call-off stock warehouse may be operated by a third party as well.
B must give written notice to the head of the relevant tax authority of B's intention to operate a consignment warehouse before the first goods enter the warehouse. Such notice must contain A's statement of its intention to move goods to the warehouse.	B has 14 days of the date when the first goods enter the warehouse within which to notify the head of the relevant tax authority, using means of electronic communication, that B operates a call-off stock warehouse.
B must keep records of the goods entering the warehouse, including the dates of entry, the dates of collection of the goods from the warehouse, information identifying the goods, as well as details of the original movement of the goods.	A, B and, if any, a third party operating a warehouse must keep detailed records of the goods in the warehouse in accordance with Article 54 of Council Implementing Regulation (EU) No 282/2011.
Goods may be stored in the warehouse for a maximum of 24 months to avoid a tax obligation.	Goods may be stored in the warehouse for a maximum of 12 months to avoid a tax obligation.
The expiry of the maximum storage period / loss of or destruction of the goods is equated with the collection of the goods by B (no consequences for A).	The expiry of the maximum storage period / loss of or destruction of the goods means that A must report an intra-Community acquisition of goods as a result of moving its own goods.
None	A is required to submit an EU VAT recapitulative statement in the member state of dispatch when the goods are moved and to communicate its VAT number to the future acquirer of the goods (a new type of a recapitulative statement).
None	B may be replaced by another acquirer in relation to goods already stored in a call-off stock warehouse, without losing the related simplification.

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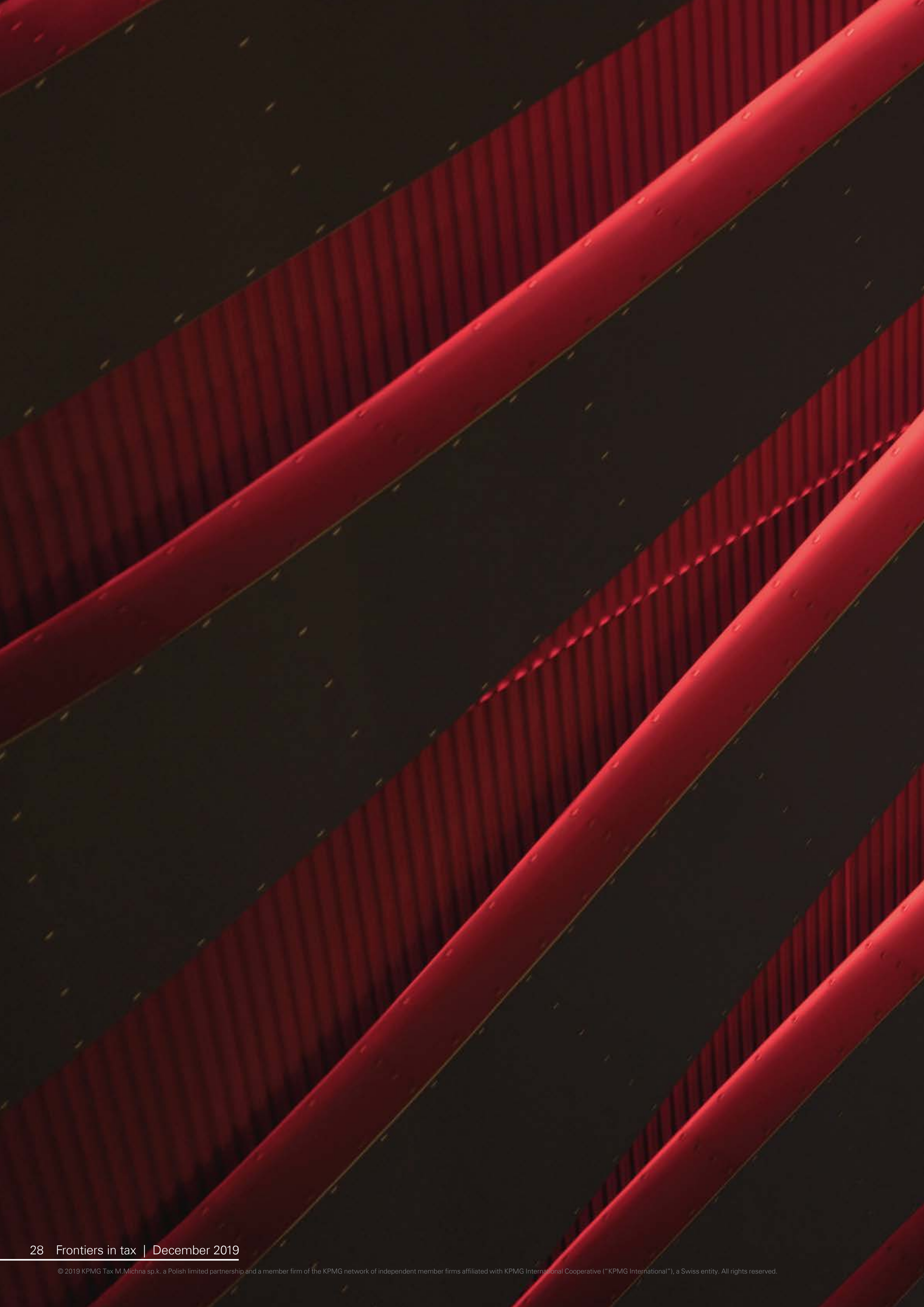


Split Payment Mechanism: a controversial tool for fighting VAT fraud

As from 1 November 2019, regulations imposing the obligatory use of the split payment mechanism (SPP) were put into effect for the sale of sensitive goods and services. While the obligatory split payment mechanism has been in use in Poland for over a month now, the rules of application of the mechanism in question are still unclear and raise numerous doubts and questions. This article outlines the major practical problems related to the application/ use of SPP currently faced by quite a large group of taxpayers.

What is SPP?

Split payment is a payment mechanism under which payment for goods or service is made by the purchaser to the supplier's bank account and:

- the net sale amount is credited to the supplier's basic settlement account;
- the VAT amount is paid to a dedicated VAT account that it automatically created by the bank as an additional account to every business/trading settlement account.

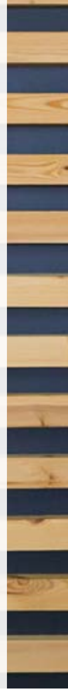
The money accumulated in the VAT account remains the property of the taxpayer, but the latter cannot manage it at his/her liberty. Such money can only be used to pay VAT for goods or services and to pay tax liabilities to the Tax Office. The taxpayer can also apply for a release of funds, i.e. for a transfer of the cash from the VAT account to the settlement account. The Head of the Tax Office has sixty (60) days to consider the application and resolve whether or not to release the VAT-account cash.

In its obligatory form, SPP is inherently a VAT fraud fighting tool, intended for counteracting situations where an unfair taxpayer, having collected VAT from the purchaser/buyer, has failed to pay the due tax amount to the Tax Office. However, the statutory sanctions provided for the failure in applying the SPP—particularly, the income tax sanction—are also harmful to honest taxpayers (also when a transaction has been properly settled and due VAT paid by a supplier).

Scope of use

Obligatory split payment extends to payments for supplies of goods and services enumerated in Annex no. 15 to the VAT Act. This includes goods and services which until 1 November 2019 were covered by the reverse charge mechanism (for instance, supplies of steel rods, mobile phones, waste, recyclable materials) and purchaser's joint-and-several liability (such as supplies of fuels, steel pipes). Obligatory SPP also extends to construction services and new commodity groups, incl. motor-vehicle parts/accessories, coal and coal products, TV sets, and other.

In line with the VAT Act, obligatory SPP is applicable to invoices whose total gross amount exceeds PLN 15,000 (or its foreign-currency equivalent). The calculation of the 15,000 threshold in a situation where the invoice encompasses goods and services to which SPP applies along with non-SPP ones triggers doubts. As explained by the Ministry of Finance, the determinant for the use of SPP is the total gross amount as invoiced, rather than only the value of goods/services whereto SPP is applicable. For example, when the invoice pertains to SPP goods worth PLN 1.00 and non-SPP goods amounting to PLN 15,000, the invoice will fall under split payment mechanism, however the obligatory application of SPP will only apply to SPP-covered goods (in the given example the taxpayer will be obliged to make a payment under SPP only in respect of goods with the value of PLN 1). In business trading practice, situations are frequent where the supplier adjusts previously issued invoices. In the SPP context, in-plus correction invoices may appear problematic. In practice, it may very often happen that the gross amount based on the original invoice is not in excess of PLN 15,000, whereas the in-plus adjustment will cause an excess of the threshold. In such a case, it cannot be excluded that payment of the original invoice outside SPP will imply a sanction.



Set-off and SPP

Considerable controversy has aroused with the issue of SPP applied in setting-off debts. As per the amended wording of Article 108a, clause 1(d) of the VAT Act, split payment is not applicable with the set-off referred to in Art. 498 of the Polish Civil Code [PCC], to the extent that the amounts due/receivable are set off. This refers to set-offs between two entities; the debts being offset have to be due.

As the aforementioned provision refers to 'setoff' (or 'offset') within the meaning of Art. 498 of PCC, its extension to other setoff institutions is problematic. One example is payments settled by means of multilateral netting, which is a popular form of settlement between entities being members of foreign capital groups. As the name suggests, such settlements are based

"In its obligatory form, SPP is inherently a VAT fraud fighting tool, intended for counteracting situations where an unfair taxpayer, having collected VAT from the purchaser/buyer, has failed to pay the due tax amount to the Tax Office."

on mutual receivables and payables being set off between a number of entities. The debts being set off are often not-yet-due. Does it mean that such setoffs would not be possible in case of payments for goods and services falling under split payment mechanism?

It is hard to find a reasonable explanation of why such a form of settlement should be treated by the legislator any differently than the setoff regulated by Art. 498 of PCC. However, taking into account the literal phrasing of the regulations in question, a restrictive approach of tax authorities in this respect should be taken into account.

Card payments and SPP

Another controversy related to obligatory SPP concerns the possibility of using a payment card when paying invoices in excess of PLN 15,000, for goods or services whereto SPP applies.

Presently, there is no technical possibility to apply SPP when paying with a card. Therefore, the question arises whether the taxpayers purchasing sensitive SPP-covered goods have been deprived of this payment option.

Unfortunately, the explanation published on the Ministry of Finance's official website leaves no doubt in this respect: "… purchase of goods to which the obligatory SPP applies in excess of PLN 15,000 gross shall not be payable with a payment card. The entrepreneur will have to pay via transfer since the transaction will be covered by SPP".

The quoted position should be regarded completely negatively. Depriving entrepreneurs/businesses of the option to pay with cards and making them switch to transfer payments will deteriorate the financial liquidity of businesses trading in sensitive goods. What is more, the Ministry's position is doubtlessly contrary to the derogatory decision obtained by Poland, whereby Poland has been authorised to apply the obligatory SPP only with respect to payments made by means of electronic bank transfer.

Collective transfers

Numerous practical doubts have aroused regarding the regulations allowing for collective bank transfers under SPP. The VAT act says that the purchaser may make a collective payment with the use of SPP for invoices issued by one supplier within a period of not less than one day and not more than one month. Importantly, should the buyer resolve to make a collective payment, she/he will be obligated to pay all the invoices issued by a given supplier within a given period—regardless of whether such invoices evidence SPP-covered transactions or not.

The regulation does not specify, though, whether in the case of such collective payments corrective invoices issued by the supplier within the given settlement period should be taken into account, and the amount of transfer can be reduced by the amounts based on the corrective invoices.

Some of the above questions still remain unanswered: there are no answers to be found in the imprecise regulations, while the explanations published on the Ministry of Finance's website remain unsatisfactory. The coming days will show the practical approach adopted by tax authorities with respect to the use of SPP. The sanctions provided for the failure to apply SPP are doubtlessly severe. Therefore, applying for individual interpretation is a step worth considering as a means of protecting oneself against the adverse consequences of erroneous use of SPP.

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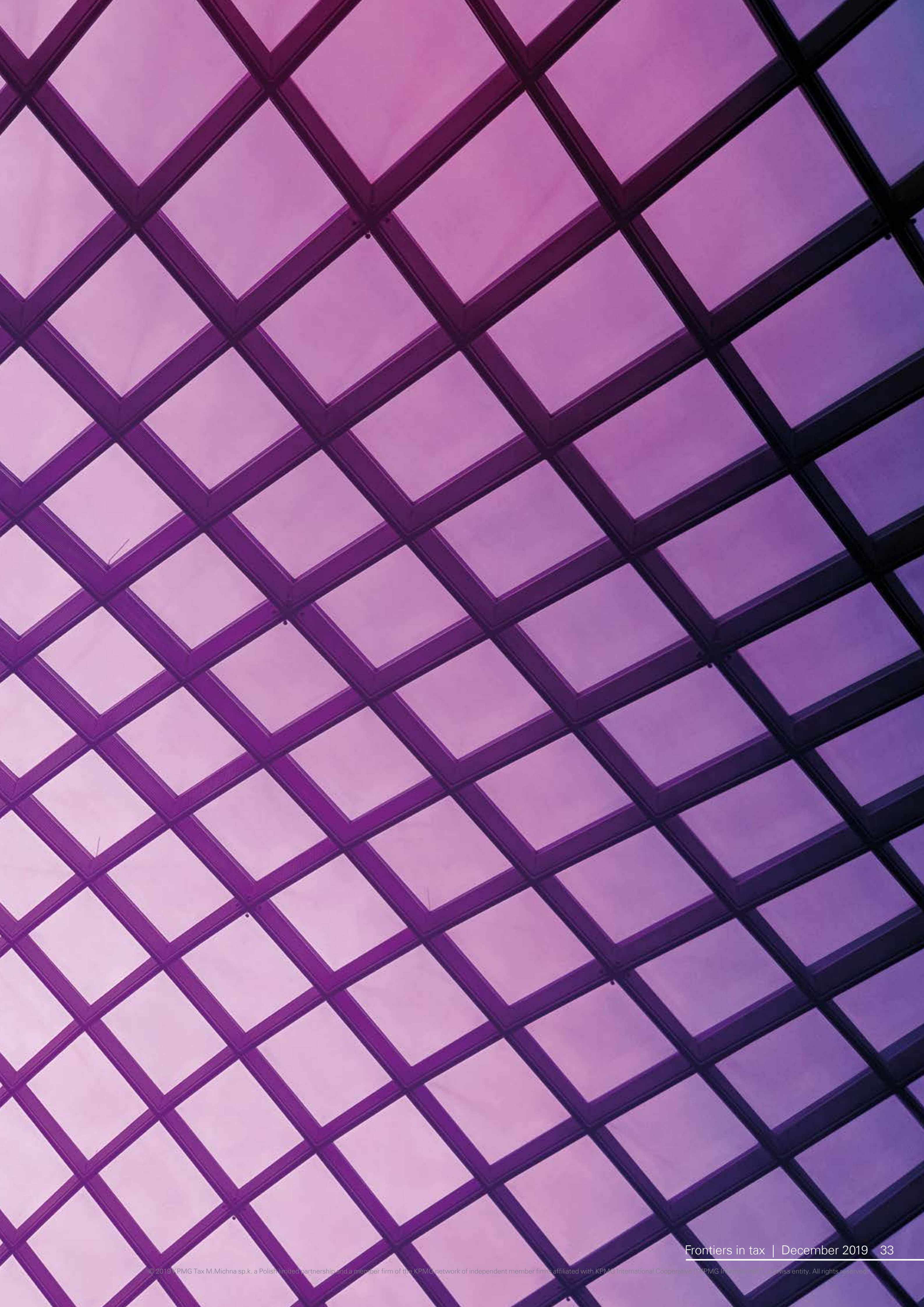
Changes to JPK VAT and FA structures in 2019-2020

The moment as from which the new JPK VAT structure (initially named JPK VDEK) was due to be in force was postponed several times. Finally, under the new names—i.e., JPK V_7M for taxpayers settling their accounts on a monthly basis and JPK V_7K for those making quarterly settlements—the structure is due to become effective from 1 April 2020 onwards for so-called large companies and from 1 July 2020 for the others. Thus, taxpayers have almost six months to get prepared for the coming change, which in fact includes a number of changes.



While the existing JPK VAT(3) file was informative, JPK_V7M and JPK V_7K are declarative. Both files combine the previous JPK VAT(3) structure, the VAT return as such, and relevant notes (additional information).

Compared to JPK VAT(3), the legislator has only dropped the 'Purchaser address' and 'Contracting Party address' boxes. This decision is seemingly right; it is worth stressing that initially, both boxes appeared in drafts of the new structures.

One of the important alterations made by the legislator is 'Indication regarding the supply and services rendered' node inserted (as part of the 'Sale_Line [SprzedazWiersz]' node), which includes thirteen groups of goods and services marked with a GTU abbreviation plus a sequential number—e.g. GTU_01 stands for the supply of alcoholic beverages.

Such a division into groups is based on various sources, including (inter alia) general notions, integrated nomenclature codes, and items of Annex no. 15 to the VAT Act. The said groups are only those of sensitive goods or services, thereby not exhausting the goods or services traded in Poland, in their entirety.

It is worth noting that the split in question may imply serious practical consequences. Namely, the lack of a common denominator for the aforementioned GTU groups and their being based on diverse sources will certainly not facilitate their creation and, subsequently, the downloading of relevant pieces of information for JPK V_7M and JPK V_7K files from the accounting systems.

The other major change is the addition of the 'Marks regarding procedures' node, consisting of thirteen types of transaction, one of them being the 'SW' box, standing for mail-order sale. Also, in this case, taxpayers should check before April 2020 whether their accounting systems enable to appropriately assign one of the thirteen transaction types to the specific sale transactions.

> Failure to correct/adjust such errors or to propose one's explanation/clarification, or completing the action after the lapse of the timeframe or final date set for the purpose will imply a decision to impose a fine of PLN 500 for every single error specified in the call.

Outside the node, a 'Tax base adjustment ['KorektaPodstOpodt']' is inserted to relate to adjustments of the tax base and the output tax, as referred to in Art. 89(a), clauses 1 and 4 of the VAT Act. As is the case with the above-listed types of transaction, this box is an optional checkbox—only to be filled out in relation to transactions under Art. 89(a), clause 1 and 4 of the VAT Act.

The 'SprzedazWiersz [Sale_Line]' and 'ZakupWiersz [Purchase_Line]' nodes have boxes added regarding the type of document (named, respectively, 'TypDokumentu' [Document Type]', to mark the certificate/bill of sale, and the 'DokumentZakupu' ['Bill of Purchase'], marking the bill (certificate) of purchase). Each of these boxes enumerates three types of documents, which altogether do not exhaust all the possible options. In the sales area, there are the following document types: 'RO' (a comprehensive document containing sales from cash registers); 'WEW' (internal document), and 'FP' (invoice issued for a sale recorded with the use of a cash register). The purchases area includes: 'MK' (invoice issued by small taxpayer); 'VAT_RR' (invoice issued by flat-rate farmer); and 'WEW' (internal document).

In the 'ZakupWiersz [Purchase_Line]' node, apart from the 'DokumentZakupu' ['Bill of Purchase'] box, two other types of transaction are indicated for the buyers to mark in their systems if a given line in the JPK V_7M or JPK V_7K file concerns the given transaction. The transactions are those to which the Split Payment Mechanism (SPM) pertains as well as import transactions (IMP)—including simplified import as referred to in Art. 33(a) of the VAT Act.

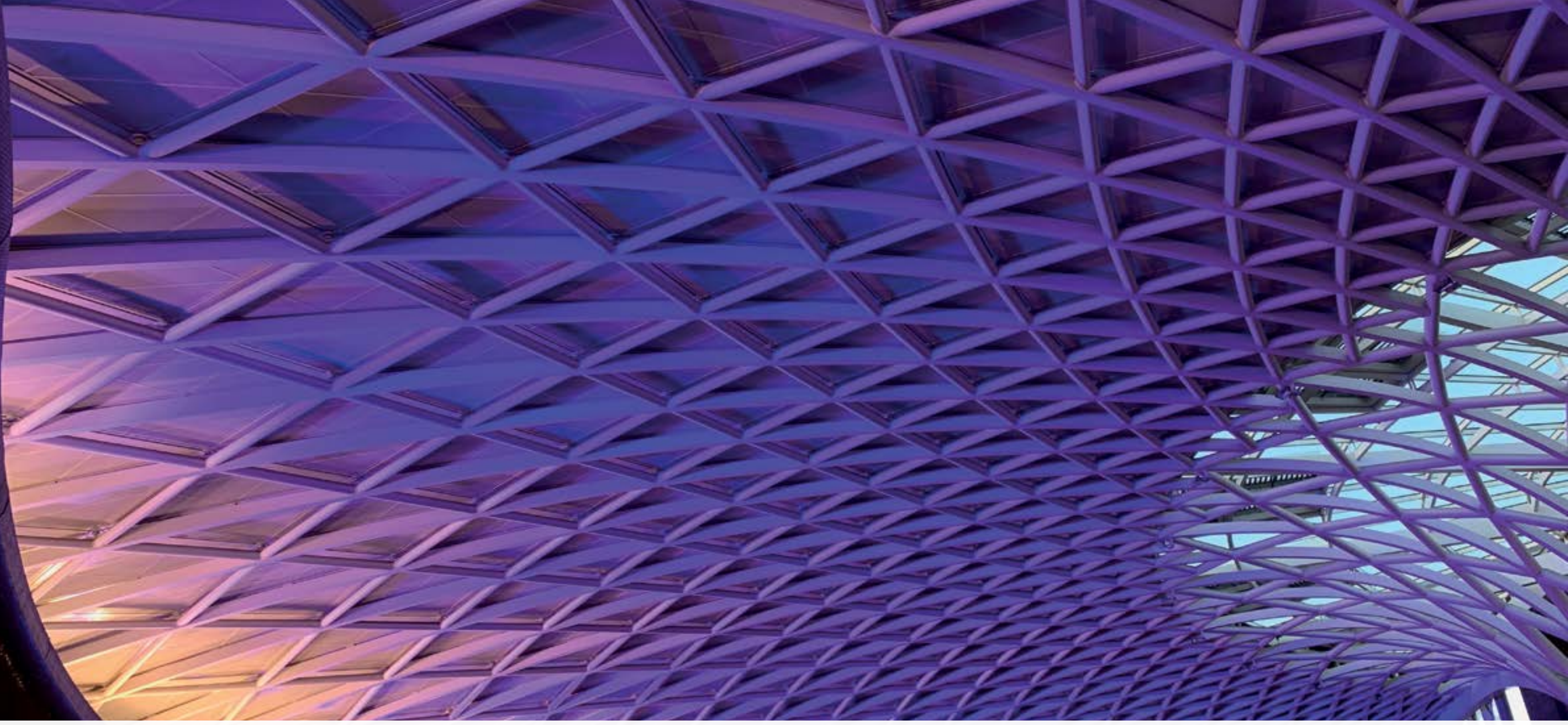
As mentioned above, the legislator has dropped the contracting-party address fields but instead added fields or boxes related to the code of the country in which the contracting party's tax identification number was granted, both in the sales and in the purchases area.

In our opinion, a practical doubt may arise around the question whether for the European Union countries the contracting party's TIN ought to be given together with the country code (plus, in addition, the country code in the appropriate field/box), or rather, separately—as a two-letter country code in a separate field, with the remainder of the number entered in the 'contracting party number' box.

We should also like to remark that the possible errors made whilst preparing the new JPK_V7M and JPK_V7K may imply significant consequences, as in line with Art. 109, clause 3(g) of the VAT Act, taxpayers have fourteen days to correct the errors indicated by the authority in the call for adjustment, or to propose their explanation that the record contains no errors referred to in the call. Failure to correct/adjust such errors or to propose one's explanation/clarification, or completing the action after the lapse of the timeframe or final date set for the purpose will imply a decision to impose a fine of PLN 500 for every single error specified in the call. The penalty is payable within fourteen (14) days of the delivery of the penalty-imposing decision.

The penalty determined in the VAT regulations for errors in the JPK_V7M and/or JPK V_7K files is aimed at reducing the number of errors, as part of the data transmitted into the system. From the standpoint of tax authorities, this would mark a considerable progress which would possibly increase the efficiency of inspection bodies.

Furthermore, based on the published layouts of the new structures, it could be surmised that they concern the period of 2020–2030. Given the circumstances, one should infer that adjustments of the settlements for the periods before 1st April 2020, beginning with 1st July 2016, will be made based on the appropriate VAT return and the JPK VAT(3) file.



To end with, in our opinion, a considerable positive change, compared to the present-day legal framework, is that the content of the new JPK V_7M and JPK V_7K structures is based upon the Ordinance 'on the detailed scope of data specified in tax returns and in the VAT records' of 18 October 2019 (i.e. Journal of Laws [JL] 2019, item 1988).

JPK FA(3) from 1 December 2019 onwards

In the tangle of changing VAT regulations, it was possible to overlook the fact that the structure of the Polish standard audit file [abbreviated as JPK] for VAT invoices (hereinafter, 'JPK FA') is being altered for the second time this year.

The changes have primarily been due to the new regulations regarding VAT invoices in respect of SPM, as launched under the Act 'amending the Value-Added Tax Act and certain other acts or laws' of 9 August 2019 (i.e. JL of 13 September 2019, item 1751).

In addition, the legislator has introduced a number of other modifications to the JPK FA structure. The new regulations in this respect only pertain to invoices issued after 1 November 2019. In practice, tax authorities can demand files produced in the new structure after 27 December 2019, this being the submission date of VAT returns for November 2019.

Worthy of note is the fact that the 'StawkiPodatku [Tax Rates]' node has been removed in the most recent version. The position of the 'KodWaluty [Currency Code]' box has been transferred from the 'Nagłówek [Head]' node to the 'FakturaWiersz [Invoice_ Line]' node. Hence, the taxpayer will generate a single JPK FA file for multiple currencies. This is a major simplification as originally one JPK FA file could only refer to invoices issued in one and the same currency. It thus could have repeatedly happened that a taxpayer issuing invoices in different currencies had to generate a number of JPK FA files for the same period.

Reporting on VAT advance invoices has been significantly modified by the addition of two elements referring to VAT advance invoices—that is, the 'NrFaZaliczkowej [No. of Advance Invoice]', for all previously issued advance invoices, and two nodes: 'Zamówienie ['Order']' node specifying the details of advance invoices, and 'ZamowienieCtrl ['OrderCtrl']' with checksums for orders or agreements/ contracts.

In addition, the structure itself determines the method of reporting on invoices issued in foreign currencies, pointing that the amounts of sale and tax are to be filled out in the currency as invoiced, save for those boxes where tax amounts have been converted in line with Art. 31(a), in conj. with Art. 106(e), clause 11 of the VAT Act.

As pointed out by the Ministry of Finance, the above changes in reporting on foreign-currency invoices and advance invoices have been postulated by taxpayers.

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Transport tracker. Global trade – the new normal

Transport tracker is a KPMG International report where KPMG experts present a summary of the performance (results) of the international transport sector. The 10th edition of the study discusses the present status of global trade, which affects the situation of the transport and logistics industries, in the face of its transformation.

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