TAX ADVISORY

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SLIM VAT package will probably come into force as of 1 January 2021.

As of January 1, 2021, the so-called SLIM VAT package amending the provisions of the VAT Act will probably enter into force. The amendments were adopted by the Parliament on 16th December 2020. As announced by the Ministry of Finance, these changes include solutions simplifying VAT settlements, as indicated by its name, „SIMPLE, LOCAL and MODERN". However, some changes are certainly not a simplifications and might lead to numerous problems.

Below we present a short information of changes to be introduced by the SLIM VAT package to the VAT Act.

SCOPE OF CHANGES	EXPLANTIONS
No requirement to obtain a confirmation of receipt of correcting invoice *in-minus* by the recipient PROBLEMATIC CHANGE	Amendment to Art. 29a.13 of the VAT Act provides the elimination of the requirement to obtain by the issuer of correcting invoice *in-minus* a confirmation of its receipt by the buyer in order to reduce the tax base and output VAT. However, it does not mean that only the issuing of a correcting invoice will be sufficient to reduce the tax base and VAT. Pursuant to the new wording of the provision, a decrease of tax base and VAT, might be made **in the tax period in which the taxpayer issued a correcting invoice, provided that the taxpayer possesses a documentation which shows that the taxpayer agreed with the buyer of the goods or services the conditions for decreasing the tax base specified in the correcting invoice, and the conditions have been met, as well as the correcting invoice is consistent with the documentation**. If the taxpayer does not have the appropriate documentation in the period in which the correcting invoice has been issued, then the correcting invoice should be declared for VAT settlements in the period in which the taxpayer obtains this documentation. This means that instead of confirmation of receipt of the correcting invoice, the supplier will be obliged to have other documentation which confirms the arrangements made with the buyer related to correcting invoice. The situation will be even more difficult on the buyer's side when he is granted a discount or the previous sales value is decreased by any reason. From the buyer's point of view, receiving a correcting invoice will be irrelevant. On the basis of the amended Art. 86.19a of the VAT Act, **the buyer will be obliged to reduce the amount of input VAT in the tax settlement period in which the conditions of reducing the tax base were agreed with the supplier of goods or services**, if

	these conditions have been met before the end of the given tax period. Otherwise, the correcting invoice should be declared in the tax period in which the conditions will be met. In the light of the above changes, in order to ensure the correct settlement of correcting invoices on both sides – supplier's and purchaser's, it seems that **it will be necessary to implement appropriate internal procedures realated to documenting by the Company's business departments the agreed conditions concerning decreasing the value of sales** which should also be responsible for forwarding such documentation to persons dealing with VAT settlements in the Company. What is important, **the transitional provisions assume the possibility of applying the current rules for declaring correcting invoices in VAT settlements by the end of 2021, <u>if it will be agreed in writing form between the supplier and the buyer before issuing in 2021 the first correcting invoice.</u>**
The repeal of Art. 7.8 of the VAT Act refering to chain transactions **PROBLEMATIC CHANGE**	The repeal of Art. 7.8 of the VAT Act relating to the chain transactions, according to the Ministry of Finance, results from the fact that the regulation has no basis in the VAT Directive and each transaction should be analyzed in accordance with the general rules for the delivery of goods, defined as the transfer of the right to dispose of the goods as owner. However, **the repeal of this provision could potentially result in a change of tax classification of certain transactions previously considered as chain transactions, e.g. in relation to activities performed by fuel card operators**, who are now treated as buyers and sellers of goods within the transaction made with fuel cards. As a justification for this change, the Ministry of Finance indicated the judgement of the CJEU regarding the taxation of fuel cards (the judgment of 15 May 2019 in the case C-235/18 Vega International Car Transport and Logistic). The Court stated that the issuer of the fuel card does not deliver fuel, but provides a financial service exempt from VAT. This may result in the lack of the right to deduct VAT both by the fuel cards operator as well as by the buyer of goods who is a user of fuel cards.
Limitation of validity of the Binding Rate Information (WIS) for 5 years from the date of its issuance **PROBLEMATIC CHANGE**	New Art. 42ha of the VAT Act **limits the validity of the Binding Rate Information (WIS) to 5 years from the date of its issuance**. Such a limitation does not seem necessary, because any change of the provision or the actual state of affairs automatically results in expiring of the WIS (similarly as in the case of an individual interpretation). Additionally, the transitional provision stipulates that WIS issued before the entry into force of the amendments are valid for a period of 5 years from the entry into force of the amendments.
Regulating the rules for declaring correcting invoice *in plus* **CLARIFYING CHANGE**	The current regulations do not include the rules for declaring correcting invoices *in plus* in VAT settlements. The new provisions introduced in the Art. 29a.17 of the VAT Act are consistent with the current practice developed on the basis of the jurisprudence. **If the tax base increases, the correction of this base shall be made in the VAT settlement for the period in which the reason of the increase in the tax base occurred.** This means that in the case of mistakes, the correcting invoice should be declared retroactively in the period in which the tax obligation related to the original invoice arose. This may result in necessity to pay tax arrears and penalty interest. If the *in plus* correction is caused by the new circumstances, unknown at the time of the issuing the original invoice, the correction should be declared in the current tax period.
Extension of the deadline for	The extension of the deadline for deducting input VAT under Art. 86.11 of the VAT Act **from the current 3 months (i.e. the month of the tax obligations**

deduction of input VAT **POSITIVE CHANGE**	**arises/receipt of the invoice or 2 subsequent months) to 4 months (accordingly 3 subsequent months)** is a positive change. For quarterly settlements the current rule remains unchanged and it is limited to three tax periods.
Increasing the amount limit for gifts of small value to PLN 20 **POSITIVE CHANGE**	It is also positive that **the limit related to the so-called gifts of small value, will be increased from PLN 10 to PLN 20.** The gifts of small value given away for free are not subject to VAT, pursuant to Art. 7.2 in conjunction par. 4 of the VAT Act. There is no need to keep records of the recipients for such gifts.
Deduction of input VAT from invoices documenting the purchase of accommodation services for recharge **POSITIVE CHANGE**	A favorable change is **the introduction in Art. 88.1.4 letter c of the VAT Act, the possibility of deducting input VAT on the purchase of accommodation services, if they are purchased and subsequently recharged**, subject to VAT in accordance with Art. 8.2a of the VAT Act. This provision introduces a legal fiction resulting in the recognition of the taxpayer acting in his own name but for the benefit of a third party as the buyer and provider of the service. Currently, in the case of purchasing accommodation services, it is not possible to deduct input VAT, also if the service is re-invoiced - to third party (e.g. another entity or to an individual).
Clarification of the quota limit for the obligatory split payment mechanism **CLARIFYING CHANGE**	The current Art. 108a.1a of the VAT Act is unclear with regard to the amount of PLN 15,000, when the obligatory split payment mechanism is applicable. It refers to "the amount referred to in Art. 19.2 of the Act of 6 March 2018 - Entrepreneurs' Law ", i.e. **the amount of PLN 15,000**. Of course, in practice, taxpayers - according to the position of the tax authorities - use split payment **to invoices for an amount "exceeding PLN 15,000"** and this will be exactly the wording of the new regulation.
Excluding the obligatory split payment mechanism in case of set-off claims **POSITIVE CHANGE**	The current provision of Art. 108a.3d of the VAT Act excludes the obligatory split payment only in case of set-off claims referred to in Art. 498 of the Civil Code. In practice, there are also other deductions than those resulting from the aforementioned provision of the Civil Code. **The new wording of the provision extends the exemption from obligatory split payment mechanism to all types of set-off claims** (including multilateral set-off claims).
Extension of the deadline for 0% rate for export of goods **POSITIVE CHANGE**	Currently, Art. 41.9a of the VAT Act, in the case of advance payments for the export of goods, requires the goods to be exported within 2 months from the end of the month in which the taxpayer received the prepayment (the taxpayer needs to receive a document confirming the export of goods outside the EU within such period). If the goods are not exported within 2 months, the taxpayer is obliged to declare the received advance payment retroactively in accordance with the local VAT rate. **The new regulations extend the time limit for the exportation of goods from 2 to 6 months.**
Optional use of the same exchange rates for VAT and income tax purposes **POSITIVE CHANGE**	The new provisions in par. 2a-2d Art. 31a of the VAT Act introduce **the possibility for the taxpayer to choose the rules of converting the tax base expressed in a foreign currency into PLN for the purposes of VAT settlements, in accordance with the rules of converting income resulting from the provisions on income tax**, applicable to this taxpayer for the purposes of settling a given transaction. The taxpayer is obliged to apply the chosen rules of converting the exchange rate for at least 12 subsequent months.
Possibility to obtain Binding Rate Information (WIS) also for goods classified according to the Polish	The current wording of the provisions on Binding Rate Information (WIS) (Art. 42a.2 of the VAT Act) state that in relation to goods, the taxpayer can only apply for classification according to the Combined Nomenclature (CN) code or Polish Classification of Construction Objects (PKOB) - for building structures. Only for services, it is possible to apply on the basis of PKWiU (2015). As a rule, WIS is issued not only in relation to VAT rates, but also for the purposes of other regulations that

Classification of Products and Services (PKWiU) **POSITIVE CHANGE**	identify goods according to a particular classification. An example of such regulations is the list of goods and services listed in Annex 15 to the VAT Act (covered by the mandatory split payment mechanism), which are defined according to the PKWiU (currently 2008, and after the entry into force of the amendments - 2015). **Once the amendments come into force, it will be possible to obtain WIS if the taxpayer has doubts about the classification of goods according to PKWiU, i.e. also for the purposes of the mandatory split payment mechanism.**
Amendment of Annex 15 to the VAT Act **CLARIFYING CHANGE**	The amendments introduce a new Annex No 15 to the VAT Act, which contains a list of goods and services subject to the mandatory split payment regime. First of all, **the PKWiU classification used for the purposes of this Annex will be changed (from PKWiU 2008 to PKWiU 2015).** However, the PKWiU symbols do not change. What is more some items/positions listed in Annex No 15 will be clarified. Hence it is necessary to analyze the amended items/positions of the new Annex No 15 taking into account the company's activity. Additionally, one of the most important changes, refers to the new wording of item No 70 of the Annex No 15. Currently the item No 70 concerns the scrap in general and refers to "wrecks", while the new wording is clarified and looks as follows: PKWiU 38.11.49.0 "Used cars, computers, TV sets and other equipment intended for scrapping". Each taxpayer to whom split payment applies - both on the sales and purchase side - should carefully analyze the new wording of Annex 15.
A new electronic system for entities that refund VAT to travelers under the TAX FREE system **NEW REGULATIONS**	The amended regulations introduce only **electronic document circulation using the TAX FREE system.** The amendments to the regulations require that the seller, at the time of sale to foreigners, will be obliged to issue an electronic TAX FREE document and send it to the IT system of the National Tax Administration, in the application intended for this purpose. The application will also allow the National Tax Administration to send back to the seller information with electronic confirmation of the export by the traveler outside the EU territory of the goods indicated in the individual TAX FREE documents. Amendments concerning new TAX FREE system are planned to enter into force as of January 1st, 2022.

Above we have presented only the most important changes introduced by the act amending the VAT Act within the so-called SLIM VAT package.

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