



Deloitte Poland Tax News for Financial Institutions | October 2020

New VAT SAF-T is here

Starting from October 1, 2020, all Polish registered active VAT payers (also those that do not have a seat in Poland, but still have a fixed establishment here) are obliged to report their VAT settlements in a new format. Based on the new requirements, each month they need to submit their VAT returns and registers as SAF-T (Standard Audit File for Tax called in Polish "JPK") to Polish tax authorities electronically.

Electronic reporting of VAT transactions in Poland is not new – it was introduced in July 2016, but it has never been so detailed as it is now. What is more, errors in VAT reporting can now be fined. A single fine

is not high (PLN 500; ca. EUR 110), but it is multiplied by the number of errors. If the tax authorities treat each incorrect record as an error, the total fine could be significant.

As financial institutions are not typical VAT payers, preparing and submitting VAT files triggers many doubts and controversies, such as:

- Should exempt VAT turnover (e.g. interest or insurance premiums) be presented as aggregated amounts, or should each transaction (although not invoiced) be treated as a single record?
- Which transactions should be marked with a transfer pricing marker?

Apart from the VAT files (sent each month; testing whether the IT system is prepared to submit VAT files in a new format is recommended), taxpayers must keep in mind that the Polish tax authorities can always request the taxpayer to send in further tax settlements as SAF-T.

Tax registers and documents such as books of accounts, bank statements, VAT invoices or warehouse / storage must be submitted electronically to tax authorities on request. The format of those registers or documents is precisely defined by tax law. We recommend checking whether your IT systems meet the new requirements.



Obligatory tax strategies since 2021

The Polish Parliament is now completing its work on the adoption of a law obliging the biggest taxpayers to prepare their tax strategy (tax policy) and then to publish online a report on the implementation of that strategy.

You will need to prepare a tax strategy if:

- you are a tax capital group, or
- you are a taxpayer with an annual turnover exceeding EUR 50 000 000.

This obligation is formally not limited to Polish tax residents, so foreign tax residents with taxable presence in Poland (e.g. a permanent establishment or a branch) may also be covered by the new obligations.

After the tax year ends, such taxpayers will be obliged to prepare and publish (online, on their websites) a report on the implementation of their tax strategy in the previous year.

Failure to comply with that regulation may lead to a fine of up to PLN 250 000 (ca. EUR 55 000).

Please note that the taxpayers may be required to prepare and approve their tax strategy before the legislation comes into force, i.e. by January 1, 2021.

VAT on services regarding employee capital plans (PPK)

Employee Capital Plans (called "PPK" in Polish) are long-term saving schemes for employees, created and co-financed by employers and the State Treasury. Starting from 2021, PPK will be obligatory for all employers in Poland (employing at least 20 people).

In October 2020, small and medium-sized enterprises (SME) should introduce Employee Capital Plans in their businesses. SMEs employees will be the biggest group of PPK participants.

From the tax perspective, there is controversy as to whether intermediary services associated with conclusion of contracts implementing PPK (management agreement and maintenance agreement) should benefit from VAT exemption. The issue is of crucial importance, as the recipients of such services (life insurers or mutual funds) are not entitled to deduct input VAT charged on purchases. Therefore, any extra VAT (the regular Polish 23% VAT rate) is a cost item decreasing the profitability of investments.

In their tax rulings the Polish tax authorities take the position that intermediation in PPK transactions should be subject to the regular 23% output VAT and cannot benefit from VAT exemption, because it is not intermediation in securities trading or insurance.

However, most of the judgements issued by Polish administrative courts of first instance state otherwise. The courts (e.g. the decision of September 29, 2020, case no. I SA/GL 630/20) confirm the taxpayers' approach that such transactions should be VAT exempt, as they are intrinsically connected with securities / insurance and the capital market.

The cases are pending before the Polish Supreme Administrative Court.

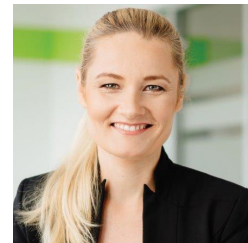
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