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Newsletter

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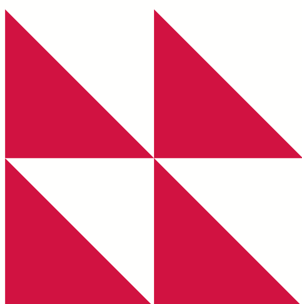

SMALL TAXPAYERS - or SLIM VAT 3

On 1 June 2023, the President signed into law the Act of 26 May 2023 amending the Value Added Tax Act and certain other acts. The main objective of the Act, so-called the "Slim VAT 3", is to further simplify the settlement of Value Added Tax. The vast majority of the provisions came into force on 3 July 2023.

The most important changes introduced to the VAT Act include:

1. An increase to EUR 2,000,000 of the sales value threshold (including the amount of tax) relevant for obtaining the status of a small taxpayer;
2. Modification of the rules and procedures for issuing, amending and repealing the Binding Rate Information;
3. Definition of rules for a VAT payer to apply the conversion rate for a correcting invoice, if the original invoice was issued in a foreign currency;
4. Modification of the rules of reporting by a VAT payer of the intra-Community supply of goods at the rate of 0%;
5. Clarification of the definition of personal luggage of a traveller arriving from a third country to Poland used for the purpose of exemption of goods imported in such luggage from goods and services tax on importation;
6. Abolition of the requirement for a payer of goods and services tax to hold an invoice documenting an intra-Community acquisition of goods as a condition for exercising the right to reduce the amount of output tax by the amount of input tax on that account;
7. Liberalisation of the prerequisites for faster refund of VAT to taxpayers making non-cash transactions;
8. Modification of the rules for determining VAT sanctions.

The increase in the sales value threshold on which the status of small taxpayer depends in the context of the VAT Act is an important step for entrepreneurs. Until July 2023, this status was granted to entrepreneurs whose sales value, including the amount of tax, did not exceed an amount equivalent to EUR 1,200,000 expressed in PLN. Now, in accordance with Article 167a of the VAT Directive, Poland has decided to raise this threshold to EUR 2,000,000.
This means that entrepreneurs whose sales do not exceed this new value can obtain the status of a small VAT taxpayer.

It is worth noting that conversions from euro to zlotys are made on the basis of the average exchange rate announced by the National Bank of Poland on the first working day of October of the previous year, rounding up to the nearest thousand zlotys.

This extension of the threshold has the potential to affect more favourable conditions for entrepreneurs and the further development of economic activity.

The institution of the small taxpayer allows entrepreneurs to enjoy privileges not enjoyed by larger entities. Such a taxpayer has the right to decide and choose between two options:

- VAT settlement on a cash basis;
- VAT settlement on a quarterly basis, instead of monthly.

If the first one is chosen, i.e. the cash accounting method, the entrepreneur must settle VAT quarterly. The exception is the period of the first 12 months from the date of registration for VAT, when he must settle VAT on a monthly basis.

On the other hand, if the choice of quarterly accounting is made, there is no obligation to use the cash accounting method.
If an entrepreneur loses his small taxpayer status during the year by exceeding the sales threshold of EUR 2 million:

1. He switches from quarterly to monthly settlement. He submits monthly declarations starting from the settlement for the first month of the quarter:
   - In which the entrepreneur exceeded the threshold - if this occurred in the first or second month of the quarter; if the exceedance occurred in the second month of the quarter, the declaration for the first month of the quarter is submitted by the 25th day of the month following the second month of the quarter;
   - Following the quarter in which the entrepreneur exceeded the threshold - if the excess occurred in the third month of the quarter.
2. He will lose the right to account for VAT on a cash basis only starting from the settlement for the month following the quarter in which the threshold was exceeded.

What is the cash accounting method?

The concept of the cash accounting also needs clarification. A trader sells goods or provides a service to another trader and pays VAT only when he himself receives payment for the invoice. If he sells goods or provides a service to a non-business person, he must pay VAT when he receives payment, no later than 180 days after the goods or service were delivered.

The choice of the cash accounting method and the notification to opt out of it is submitted by means of the official VAT-R form.

It is worth noting that even a small taxpayer cannot use the cash accounting method in the following cases:

- Intra-Community supply of goods;
- Import of services;
- The supply of goods as a result of the transfer of a single-purpose voucher;
- The release of goods by the principal to the commission agent under a commission contract;
- Transfer by order of a public authority of ownership of goods in exchange for compensation;
- The supply of goods by way of execution as referred to in Article 18 of the VAT Act;
- The provision on behalf of courts of services related to court or pre-trial proceedings, with the exception of services to which Article 28b of the VAT Act applies, which constitute import of services;
- The provision of tax-exempt insurance services, such as the granting of credits or loans, credit intermediation;
- Receipt of grants, subsidies and other subsidies of a similar nature.

How do we assess these changes?

Positively, due to the increase in the number of taxpayers entitled to use the cash accounting method and quarterly VAT accounting.

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Tax

A family foundation may be an interesting solution in the context of succession

A family foundation, which could theoretically be in place as early as May this year, is primarily intended to solve succession issues, because until now, after the death of an entrepreneur, successors had to go through complicated and lengthy succession proceedings, which in practice often prevented the company from continuing its business. A family foundation is therefore intended to enable the management of the company's assets and support succession planning for the next generation.

The idea is for a family foundation to own the assets transferred to it and to distribute the income derived from these assets to the beneficiaries.

Unfortunately, foundations only work in theory so far, as there are still problems with their registration, although this problem is said to be resolved soon.

A family foundation is a legal entity and as such, it is subject to corporate income tax (CIT). The taxation of a family foundation is somewhat similar to Estonian CIT since as long as the foundation does not make benefit payments to beneficiaries, it does not pay income tax unless its activities go beyond the permitted statutory scope. When a benefit is paid out, the foundation taxes the value of the paid out benefit with 15% corporate income tax and then with 10 % or 15% personal income tax.

The provisions on a family foundation also provide for other tax benefits, starting with its establishment. The very act of establishment and the transfer of assets is not taxed. The legislation assumes that - unlike, for example, the establishment of a company - there is no taxable income on the part of either the family foundation or its founders. The tax on civil law transactions (transfer tax) has also been waived, with regard to the activities that constitute a family foundation (i.e. on the transfer of assets).

As already mentioned, the foundation does not pay taxes from its activities on an ongoing basis, but only at the time of disbursement of funds to beneficiaries. This is a favourable solution. Unfortunately, a problem arises at this point, as deductible expenses and depreciation cannot be deducted when calculating tax. The tax base is the income equal to the value of the benefit or property received by the beneficiary.

The business activities of a family foundation are limited by law and may consist in particular of:

- trading in assets, including shares in companies;
- leasing;
- the granting of loans to companies in which the family foundation holds shares or to beneficiaries;
- trading in foreign currency for the purpose of making payments related to the activities of the family foundation; and
- activities in connection with an agricultural holding.

If a family foundation goes beyond the above catalogue in its activities, it has to expect to pay CIT at a rate of 25 per cent.

If the family foundation is dissolved and the property is transferred, the applicable CIT is 15%. However, in such a situation, the taxable income is adjusted by the tax value of the property contributed to the foundation by its founder. This value is equal to the tax cost that the founder would have taken if the property had been disposed of for consideration immediately prior to its contribution to the family foundation. It is important that this value does not exceed the market value of the property. Such provisions are part of the regulations aimed at ensuring fair and adequate taxation when transferring property in connection with the dissolution of a family foundation.

Tax benefits are also provided for beneficiaries who are exempt from personal income tax (PIT) if they belong to the funder's immediate family. This refers to the founder himself and his spouse, ascendants, descendants, siblings, stepchildren, stepfather or stepmother.

Individuals classified to tax group I or II within the meaning of the inheritance and donation tax regulations (i.e. further family members) will pay PIT at the rate of 10 per cent. Other beneficiaries, family members not related to the founder, will pay 15 per cent PIT.
The foundation is subject to VAT like any other business entity, i.e. depending on the activities performed and revenues generated.

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Whistleblowers - is it time to implement changes?

Although legislation requiring the implementation of whistleblowing procedures is still pending, it is better not to wait for the implementation of the changes. It is possible that they will be enacted in the autumn, and it is also very likely that there will not be a sufficient transition period to comply with the new obligations.

The issue of whistleblower protection has been raised in Poland for more than two years, and this is due to the fact that the EU Whistleblower Protection Directive should be implemented in the Polish legal order in the form of a law by 17 December 2021 as far as state bodies and private entities employing more than 249 people are concerned.

The topic is now on the table again, as the implementation deadline for private entities employing between 50 and 249 people, which is 17 December 2023, is fast approaching.

The next version, now in its ninth year, of the whistleblower protection bill was published on the Government Legislation Centre website on 1 August 2023.

The latest version of the so-called 'whistleblower bill' introduces two important changes. The first concerns the introduction of an extended period of vacatio legis - giving entrepreneurs 14 days from the date of promulgation of the law to start the procedure for implementing an internal whistleblowing system. This change can definitely be seen as positive. However, despite this change, the time provided for in the bill is short and may not be sufficient to adequately prepare an organisation to implement a proper internal whistleblowing system, especially given the deadlines set by the bill for consultations with either trade unions or employee representatives.

For this reason, entities concerned should get prepared for the implementation of the changes well in advance.

The second major change is to broaden the circle of whistleblowers, in the sense that, according to the new bill, a whistleblower may also be an officer of uniformed formations, for example: a police officer, firefighter, soldier, Border Guard officer, etc.

However, given the approaching deadline for the implementation of the legislation for smaller private entities (17 December), it is quite likely that the bill may be submitted to the Sejm in the near future and subsequently enacted.

In conclusion, it is also worth noting that the current bill provides for two effective dates:

- entry into force of the entire Act on whistleblowers - within two months of promulgation;
- entry into force of the provisions on the implementation of the procedure for internal notifications and external notifications - within 14 days of the promulgation of the Act.

This means that companies with at least 50 employees will have to implement an internal procedure within a very short period of time from the publication of the Act.

The implementation of the internal procedure implies:

- a consultation phase (with the trade union/employee representatives) of between seven and 14 days, and
- communication of the internal procedure in the manner adopted by the company and a "waiting" period of 14 days before it comes into force (the same as for the Labour Regulations).

With the above in mind, it is worthwhile for entrepreneurs employing at least 50 people to take an interest in the issue of whistleblowers already before the entry into force of the Act, so that they can, inter alia, prepare for the implementation of an internal procedure and draft documents (e.g. rules and regulations) and establish a whistleblowing channel and, consequently, consider the possibility of using external whistleblowing platforms and, furthermore, determine who will deal with whistleblowing within their structure.

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Law

Adoption of resolutions by the management board of a limited liability company

The management board of a limited liability company is, in principle, a collegiate body. Unless the articles of association provide otherwise, each member of the management board has the right and duty to manage the business of the company. "Managing the company's business" is to be distinguished from the issue of representing the company. These activities may concern property matters as well as purely technical matters related to the day-to-day operation of the company.

The ordinary course of business may be dealt with by each member without the need for a resolution to this effect. The obligation to adopt a resolution arises in the case of matters falling outside such scope, as well as in the case of an objection by one of the members to acts falling within the ordinary course of business.

An important issue here becomes the assessment of which activities fall into the category of "ordinary" and which exceed this scope. This delineation should be assessed taking into account the characteristics of the company concerned, its size, established practice, the consequences of the actions taken.

As a general guideline, acts outside the ordinary course of business are usually considered to be those that fall within the scope of activities that would be considered normal for a business. A good solution is to systematise these issues in the management board's rules of procedure. By clarifying these terms, doubts or disputes in this area can be avoided. Members of the management board will thus have clear instructions indicating what falls within the ordinary course of business and what exceeds it.

This is important because, unless the articles of association provide otherwise, resolutions can be adopted in three ways:

1. during a management board meeting;
2. by means of direct communication at a distance (e.g. by teleconference or videoconference);
3. in writing (e.g. on the basis of resolutions sent by letter by the management board members).

As the law currently stands, all management board resolutions should be minuted. It is indicated that resolutions adopted by means of direct remote communication and by written procedure are also covered by this obligation.

The minutes should contain the agenda, the names of the management board members present and the number of votes cast for each resolution. The minutes shall also indicate the dissenting opinion of a member of the management board and any reasons for it. The minutes shall be signed by at least the member of the management board chairing the meeting or managing the vote, unless the articles of association or the rules of procedure of the management board provide otherwise.

Resolutions of the management board may be adopted if all members have been duly notified of the management board meeting. An absolute majority, i.e. more than half of the votes cast, is also required to pass a resolution.
The above rules do not, of course, apply to a one-person management board, where the sole member takes decisions individually.

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