

CHANGES IN REGULATIONS ON TAX ON GOODS AND SERVICES IN POLISH LAW POSING AN ATTEMPT TO COUNTERACT THE PHENOMENON OF TAX LOOPHOLE

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Abstract. The subject of analyses made in this work has been the presentation of the direction of changes, being implemented by the legislator in the scope of regulation of The Goods and Services Tax Act. This trend has recently been closely linked with the noticeable increase in VAT fraud in all EU Member States. Due to the scale and scope of the problem, the European Commission has attempted to prepare a strategy to fight fraudsters. This strategy, developed in the so-called Green Paper on the future of VAT, includes proposals for new mechanisms to combat tax loopholes, including: reverse charge model, split payment method, central VAT monitoring base, keeping a record of the data in Single Control File, construction of “certified taxpayer” or Eurofisc. As indicated in the work, the direction of changes introduced and announced in the VAT Act is part of the implementation of the strategy adopted by the European Commission. In addition to the already implemented reverse charge model as well as Eurofisc implementation, methods such as split payments or the Central Invoice Registry will be introduced in 2018.

Keywords: *tax law, tax on goods and services, tax loopholes, carousel frauds, methods of preventing tax loopholes*

Introduction

The subject of this paper will be an approximation of the direction of changes in the scope of VAT regulations in force in Poland¹, as well as the exemplary regulations that reflect it. The implemented solutions resulted from a negative assessment of the previously binding regulations, in order to secure the Treasury against the actions of taxpayers causing tax loopholes. The most common example of such actions, generally referred as tax frauds, is the mechanism of carousel fraud. Since carousel frauds are closely related to the harmonization of VAT, this phenomenon occurs in all Member States of the European Union. Given the scale and scope of the problem, an attempt was made to develop strategies to prevent tax loopholes, and the European Commission has recommended several methods developed in so-called Green Book. This gives the basis for answering the question

¹ The Goods and Services Tax Act from 24.03.2004 ie Dz. U. 2017, item 1221, known as VAT Act.

whether the direction of changes adopted in the VAT Act is part of the implementation of the strategy adopted by the European Commission.

1. Mechanisms for combating tax fraud proposed by the European Commission.

The directions of changes, reflected in the amendment to the VAT Act, are related, among other things, with the introduction of solutions aimed at preventing the occurrence of tax loopholes phenomena. Some of these mechanisms are recommended by the European Commission, which has paid close attention to the problem of tax fraud since 2004². In 2006 the European Commission issued a Communication on the need for a coordinated strategy to improve the effectiveness of combating tax fraud. Two Commission advisory bodies, the Standing Committee on Administrative Cooperation (SCAC) and the Anti Tax Fraud Strategy Expert Group (ATFS), played a key role in the design of this strategy³. In the adopted strategy (modified in 2011) called Green Paper on the future of VAT, new mechanisms have been proposed to combat tax fraud, including: modification of the reverse charge model, split payment method, central VAT monitoring database, construction of “certified taxpayer” or Eurofisc, which is essentially a system of exchange of information, not a method in itself.⁴

Some of these solutions have already been introduced into the VAT Act. Some of the proposed models are to be introduced and others are still being considered at the Ministry of Finance level. In addition, tax fraud is also being prevented by the regulations introduced by the VAT Act, linked to the methods described above, such as, for example, the joint liability of the purchaser for VAT arrears of the supplier of the goods⁵.

² This problem has been known since the mid- 1990s, but has again been paid attention because the antifraud mechanisms introduced in the 1990s failed to produce the expected results. In particular the so-called VIES system (VAT information exchange system) implemented in 1994. European Commission [1994],

*Report from the Commission to the Council and the European Parliament. Application of Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT). COM (94) 262 final, Brussels, 27 May 1994. In 2004, the European Commission in its report admitted that the time between the declaration of intra-Community acquisition of goods and the publication of this information to the Member States was too long and the data contained in VIES was incomplete. European Commission [2004], *Report from the Commission to the Council and the European Parliament on the Use of administrative cooperation arrangements in the fight against VAT fraud*, Brussels, 16 April 2004, p. 9.*

³ Raczkowski K., *Eurofisc - a decentralized network for VAT cooperation*, Parliamentary Research Office 2011, No. 6, p. 3.

⁴ Zybin K., *Modernization of the Value Added Tax System in the European Union*, Tilburg University, Tilburg 2014, p.19.

⁵ Solidary liability for VAT is another prevention method directed against carousel frauds. The possibility of its introduction into the legal system was confirmed by the Court of Justice of the European Union (Judgement CJEU from 11.05.2006 in case C-384/04). Under Polish law, the provisions on joint liability of the purchaser for VAT arrears of suppliers of goods have been introduced into the VAT Act as of 1.09.2013 (art 105a VAT Act). Since the date of its application, these regulations have been limited to the category of goods specified in Annex 13 to the VAT Act. As of 1.07.2015 and

2. Mechanisms of combating tax fraud introduced into the Polish legal system

2.1. Reverse charge mechanism

Reverse charge mechanism rely on the transfer of the obligation to settle VAT from the supplier of goods or services to the purchaser of those goods or services. Under the reverse charge mechanism obligated to settle the tax due from a taxable transaction is therefore the buyer of the goods or services and not the supplier, as is the case with the general rules. This mechanism was also introduced into the VAT Act. Initially, it was connected to a small area of taxable activities, particularly of a cross-border nature. However, due to the scale of scams in VAT along with the subsequent amendments to the Act, it has covered more and more activities. On day 1.07.2015 and then 1.01.2017, entered into force new regulations under which the provisions of the VAT Act concerning the reverse charge mechanism have been extended and clarified.⁶ In particular, the scope of the goods subject to reverse charge delivery has been extended. The scope of the mechanism was also extended to some of the transactions related to the provision of construction services. This solution was introduced as a result of irregularities observed on this market. In particular, they concerned the use of invoice schemes that did not reflect actual transactions.

2.2. Split payment method

The split payment method consists in splitting the payment for each invoice into two transfers. The net amount is transferred to the counterparty's current account, while the amount of VAT is paid to the account under the supervision of the tax authorities. From this special account created for VAT it is possible to transfer money only to other VAT accounts supervised by the tax authorities.⁷ According to this method the entrepreneur cannot freely dispose of the full amount received from the contractor. This mechanism can thus prevent "disappearing" taxpayers from paying tax. In addition, because the access to the VAT account would have been constant, the process of paying tax to the tax authorities would also be accelerated. In the current Polish system this method has not yet been introduced. It is contained in the amendment to the VAT Act, which would come

again later on 1.01.2017, Annex No 13 to the VAT Act, containing the catalog of goods for which the joint and several liability of the purchaser applies for the supplier's liability has been extended. At the same time, in the VAT Act (art. 96 sec. 4b) and in the Tax Ordinance Act (art. 117c) provisions were introduced to jointly and severally liable the representative of the taxpayer for the tax arrears of the taxpayer arising from the actions performed within 6 months of the date of registering the taxpayer as the VAT payer.

⁶ Those provisions were introduced in 9.04.2015 by Act amending the Goods and Services Tax Act and the Public Procurement Law (Dz. U. item 605) and in 1.12.2016 Act amending the Goods and Services Tax Act and some other acts (Dz. U. item 2024).

⁷ Zybin K., Modernization of the Value Added Tax System in the European Union, p. 25.

into force on 1.07.2018. According to the solutions adopted in the project, split payment is to be a voluntary system and therefore binding only to those entrepreneurs who declare their will to join it. The split payment account is intended to be a normal business account to which the tax authorities will not have access. The only difference will be that the possibility of disposing of funds from this account will be limited. Such an account will allow only for transfer of funds to the VAT invoices of other entrepreneurs, as well as fulfilment of VAT obligations. An entrepreneur using this mechanism will not be charged overdue interest in a situation of late payments, and will not be liable jointly with the supplier of the goods.

2.3. Central Invoice Registry

One of the recommended fraud prevention method in the Green Paper on the future of VAT is also the concept of setting up a central VAT monitoring center – the Central Invoice Registry (CIR).⁸ This concept was based on the premise of creating a database run by the Ministry of Finance. Taxpayers would introduce into it all issued and received invoices in real time. In this way sent and received invoices would be used to automatically created sales and purchase registers, and then supplemented with data from the remaining records and VAT declarations. The task of the CIR system, however, would not simply be to collect data from documents, but also using sophisticated analyses of transmitted data, simultaneously performing checks. The advantage of introducing this system is therefore the ability to keep track of issued invoices, but also to detect carousels or invoices with incorrect

VAT rates. Ministry of Finance announced the introduction of Central Invoice Registry for the end of 2018. The form of the Central Invoice Registry is yet unknown⁹.

2.4. Eurofisc

Eurofisc is not a method of eliminating tax loopholes (including carousels), but a platform for exchanging information between Member States. This platform

⁸ The Central Invoice Register register in 2013 began to function in Portugal. This solution was introduced in 2015 in Czech and Slovakia. In 2017, the Central Invoice Register was introduced in Spain.

⁹ Three concepts are contemplated here. The first concept assumes that taxpayers would manually provide invoice data to the registry. The obligation to record invoices would lie here both at the exhibitors and the recipients of invoices. According to the second concept data from electronic invoices would be integrated into the Single Control File. Each registered invoice would receive an individual number to avert the risk of invoice being registered more than once. This individual number would also make it possible to link data from the Central Invoice Registry to the Single Control File. The third concept is related to total abandonment of paper invoices. According to this concept, a specialized computer program would be created with a sole competence to issue an e-invoice. This model requires the largest financial effort because the burden of delivering software should lie with the Ministry of Finance. In addition, due to the need to completely switch to electronic invoicing, this model would require an extended transition period.

has been operating in Poland since 7.02.2011.¹⁰ Eurofisc cooperation between the countries is primarily concerned with the exchange of information between the Member States about VAT fraud on their territory, the exchange of experience in the field of tax fraud, mutual information on national legislation in this area and mutual training of officials and specialist. Eurofisc is therefore an electronic platform managed by the European Commission to create a multilateral early warning mechanism for fraud on goods and services, exchange of information covered by Council Regulation 904/2010 and coordination of liaison officers work on received warnings. To this end, each Member State is obliged to establish a Central Liaison Office (CLO), designate one or more liaison officers from the anti-fraud experts (LO), and identify liaison authorities (LA), with whom cooperation should be maintained as part of Eurofisc.¹¹ Eurofisc is therefore not a mechanism to eliminate tax loopholes, but with appropriate cooperation between Member States, it can contribute to early detection.

Summary

The amendments to the VAT Act, made in recent years, reflected the negative assessment of the former regulations of the law, in terms of securing the Treasury from taxpayers actions resulting in a tax loopholes. The aim of the regulations was to try to prevent extortion of that tax. The direction of changes adopted in the VAT Act is part of the implementation of the strategy adopted by the European Commission and developed in the so-called VAT Green Book. Attempt to devise methods to prevent fraud by the European Commission stemmed from the fact that most of the problems with VAT abuse are related to the way taxation of intra-Community transactions is concerned, so these problems affect all countries that are member of the European Union¹¹.

An analysis of changes made to the VAT Act indicates that some of the implemented solutions corresponded to the European Commission's postulated methods of preventing tax loopholes. In addition to the already operational reverse charge mechanism, methods such as split payments or the Central Invoice Registry will be introduced in 2018.

It should be noted that apart from the European Commission's methods of counteracting tax loopholes, additional regulations have been introduced to the

¹⁰ On the basis of implementation Council Regulation No 904/2010 of 7.10.2010 on administrative cooperation and combating fraud in the field of value added tax which also implemented Eurofisc network. ¹¹ Raczkowski K., *Eurofisc - a decentralized network for VAT cooperation*, p.3.

¹¹ As assessed by the Ministry of Finance, the shortfall (so-called gap) of VAT is estimated in Poland by various sources for 25 to 60 bln PLN. According to data published by the European Commission in 2014, the EU lost 159,5 bln euro in VAT revenue. In absolute value, the largest gap of 36,9 bln euro was recorded in Italy, while Luxembourg showed the lowest gap of 147 mln euro. A gap of 9,3 bln euro has been noted in Poland.

VAT Act to serve this purpose. One of such solutions is joint and several liability for the obligations of the supplier. Moreover applicable as of 1.01.2017: 1) regulation of sanctions in the form of additional tax liabilities for actions aimed at unreliable tax settlement or overstatement of VAT, 2) introduction of new grounds for refusal to register active VAT taxpayers, 3) limiting the use of quarterly settlements, and 4) introducing the obligation to electronically file VAT returns.

It should also be noted that the package of new regulations covered not only changes in the VAT Act itself, but also in other tax regulations. In particular, such changes were made in the Tax Ordinance Act and in the Tax Penal Code. In the Tax Ordinance Act alongside the introduction of the Single Control File or the liability of a jointy -acting representative of a taxpayer, the rules governing cross-checks have also changed. An ability was introduced to carry out verification of activities for all entities participating directly or indirectly in the delivery of goods or services and therefore to all entities involved in the entire supply chain. Changes in the Tax Penal Code consisted among others in tightening of sanctions (including imprisonment) for persons involved in tax loophole. At the same time, new types of crime related to fictitious invoices were introduced.

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