



Tax Alert

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The Polish Deal – VAT changes

1. VAT Groups

The Polish Deal allows related entities to settle jointly for VAT purposes within a „VAT Group”. VAT groups are supposed to simplify and increase the financial effectiveness of intra-group transactions by relieving them from VAT taxation.

Principles of the VAT Group

Key simplifications to VAT Group taxation will include:

- a) the supplies of goods and provision of services between members of a VAT Group are not taxable,
- b) the supplies of goods and provision of services by a member of the VAT Group to an entity outside the VAT Group, including a foreign parent company of a Polish branch that is part of the VAT Group, are deemed to be made by that VAT Group, and
- c) the supplies of goods and provision of services by a member of the VAT Group to an entity outside the VAT Group, including a foreign parent company of a Polish branch that is part of the VAT Group, are deemed to be effected for the benefit of that VAT group.

Both during the period when the VAT Group has the status of a taxpayer and after the VAT Group loses the status of a taxpayer, the members of the VAT Group are jointly and severally liable for the VAT Group's obligations.

Settlements within the VAT Group

When the VAT Group is registered as a VAT taxpayer, the particular members of the VAT Group lose their status as individual VAT taxpayers. This means:

- a) the VAT Group members do not document intra-group transactions with invoices;
- b) settlements between VAT Group members do not require split payment mechanism.
- c) the VAT Group submits a single tax return/SAF-T.

Despite joint VAT settlements, the VAT Group members will have to **keep records**; this will make it possible to determine the details of intra-group transactions, to allocate the Group's turnover to specific Group members, and to determine the ratio of VAT deduction separately for each VAT Group member.

Conditions for establishing a VAT Group

A VAT Group may be established only by VAT taxpayers who:

- a) have a seat or a branch of a foreign entrepreneur in Poland,
- b) conclude an agreement on establishing a VAT Group for a minimum period of 3 years (an extension will be possible later),
- c) are financially, economically and organizationally connected, i.e.:
 - **a financial link** - one member of the VAT Group directly holds more than 50% of the shares in the other members of the Group,
 - **an economic link** - the main activities of the members of the VAT Group are of the same nature, or the activities of the members of the VAT Group are complementary and interdependent, or a member of the VAT Group carries out activities that benefit wholly or largely the other members of the VAT Group, and
 - **an organisational link** - all members of the VAT Group legally or in fact, directly or indirectly, are under common management or organize their activities wholly or partly in cooperation.

It will not be possible to change the list of the VAT Group's members during the existence of the VAT Group, i.e. the VAT Group will not be able to be extended to other entities, nor will any member of the VAT Group be able to exit the VAT Group.

2. Possibility to opt out of the VAT exemption for financial services

The Polish Deal introduces the possibility to opt out of the VAT exemption for certain financial services. This opportunity may be advantageous for taxpayers providing financial services who make investments resulting in input VAT.

Opt-out rules

Opting out of the VAT exemption for financial services will be voluntary. To use this option, the taxpayer will have to submit a notice on the choice of taxation of these services before the beginning of the settlement period the taxpayer wishes to opt out from using the exemption.

Opting back in for the exemption will be possible but not earlier than after 2 years. However, this is only possible if the taxpayer submits a written notice of resignation from taxation.

The possibility of opting out from the exemption is allowed **only with regard to the services provided to entities being subject to VAT** (business clients).

Financial services provided to retail clients (non-VAT payers) will be still subject to the obligatory VAT exemption.

Services that may be subject to VAT

The mechanism for opting out of the VAT exemption will apply to the following services:

- a) transactions, including intermediation, involving currency, bank bills and coins (legal tender),
- b) fund management,
- c) services of granting credits or money loans, intermediation in the provision of these services, and the management of credits or money loans by the creditor or lender,
- d) services of surety, guarantees, and any other securities for financial and insurance transactions, the intermediation of these services, and the management of credit guarantees by a creditor or lender,
- e) cash deposit services, keeping of cash accounts, payment transactions of all kinds, money orders and money transfers, debts, cheques, and bills of exchange, as well as intermediation services related to these services,
- f) services, including intermediary services, involving shares in companies or entities other than companies, if they have legal personality, and
- g) services involving financial instruments and the provision of intermediation services related to those financial instruments.

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