RSM KZWS

Newsletter 3/2010

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Ladies and Gentlemen,

The end of the year 2010 is nigh. The end of every year is a time for us to sum things up, and thus provokes reflection. There is a lot to suggest that the period of (post-?)crisis stagnation is a thing of the past for many Polish enterprises. Regrettably, for a great number of these an economic boom is yet to come. Tax changes arising from the pre-election lack of propensity for saving in those in power are not bound to have a positive effect on running business in Poland. Numerous industries and every consumer will be hit by a rise in the VAT. Budgetary problems are always bound to intensify fiscal auditing and focus it on 'looking for taxpayers' money'. KZWS expects an increasing number of entrepreneurs to undergo fiscal audits and decisions aimed at supporting the patching up of the budget which is to be issued, which almost always entails a pro-fiscal bending of applicable legal regulations. Unfortunately, statistics are cruel and conclusively prove that most decisions of first instance tax authorities are still not appealed by taxpayers. Such entrepreneurs' strategy seems to be poor as the 'lightning' tends to strike the same place more than once. We encourage all entrepreneurs to treat decisions issued by tax authorities very sceptically and appeal against those, especially in a 'budget patching' period. We cannot allow the treasury to use enterprises as their 'cash machines'.

2010 was a great year for KZWS: our revenues increased by more than 20%, which is a fine achievement in the still difficult market conditions. Our rapid development would not be possible, were it not for our Clients and Co-Workers. We would like to thank all of you sincerely for that with the hope for many years of fruitful cooperation in the future.

Bartosz MIŁASZEWSKI

Tax Adviser (11251)
Managing Partner

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From the Editorial Team

I have the pleasure to present to you a new issue of our newsletter. I hope it will keep you interested and meet your expectations to the greatest possible extent. One of the principal rules followed by KZWS is to listen carefully to our Clients. Thus, I will be truly grateful for all comments regarding the content and form of this publication.

Now both our Clients and the whole KZWS Team are waiting for the train called the **New Year, 2011**. We would like to take this opportunity to thank you for the fruitful cooperation in 2010 which – as we believe – brought great satisfaction, both to you and us . We can probably assume that the most difficult period for the whole economy is a thing of the past. Therefore, the whole KZWS Team would like to wish you a Merry Christmas and a Happy New Year – rapid development of business, only pleasant surprises, and the comfort of professional consultancy – hopefully in cooperation with KZWS.

Przemysław POWIERZA
Tax Adviser (11204)
Tax Partner
within the Tax Advisory Department

Top News

All the signs are that the end of the year is all about changes in regulations concerning the goods and services tax (VAT). The majority of amendments were initiated by the Ministry of Finance, although the change in regulations itself results to a large extent from the evolving EU law in the scope of the common value added tax system, as well as the erstwhile inconsistency of Polish regulations with that system. New rates only seem to be the flagship for the whole armada of introduced changes as, before the new year begins, attention should be paid to a great number of other important novelties – most of them will be discussed already in this newsletter.

VAT

Intra-Community supply of goods – formal requirements for applying a 0% rate

The intra-Community supply of goods means exportation of goods from the territory of a country to the territory of another EU country in the performance of taxable actions. The intra-Community supply of goods also includes the movement of goods owned by a taxpayer's enterprise, which have been manufactured, extracted or purchased by that taxpayer within the framework of an enterprise run by them in the territory of a country, from the territory of that country to the territory of another member state – if those goods are to be meant for economic activities.

No tax is imposed – as a matter of principle – on the intra-Community supplies of goods, and thus a 0% rate applies to them. However, in order to take advantage of that rate a taxpayer must have several documents confirming that the intra-Community supply of goods has taken place (proofs that goods have been exported from the territory of a country and delivered to a buyer in the territory of a member state other than the territory of the country).

Those proofs are the following documents provided that they all confirm the delivery of goods to a buyer located in the territory of a member state other than Poland:

- transport documents received from a carrier (forwarding agent) responsible for the exportation of goods from the territory of a country clearly indicating that the goods have been delivered to their place of destination if the carrier (forwarding agent) is ordered to transport the goods,
- he copy of an invoice, and
- the specification of individual cargo units (article 42 paragraph 3 of the Goods and Services Tax Act – the GSTA).

If a taxpayer or their customer transport goods subject to the intra-Community supply of goods by using their own means of transport, the application of a 0% VAT rate requires the above-mentioned documents (copy of an invoice and specification of individual cargo units) **to be supplemented** with a document containing at least:

- the name and surname or name and address of registered office or place of residence of the taxpayer performing the intra-Community supply of goods and the purchaser of those goods,
- an address to which the goods are transported if different from that of the buyer's registered office or place of residence,
- the specification of goods and their quantity
- a confirmation that the goods have been received by the buyer,
- the type and registration number of a means of transport by which the goods are carried (or possibly a flight number if goods are shipped by air) (article 42 paragraph 4 of the GSTA).

In the event the buyer transports a new means of transport without the use of another means of transport (e.g. a car carrier), the above-mentioned documents **have to be supplemented** with a document containing details allowing to properly identify the taxpayer supplying the new means of transport, the buyer, and the new means of transport itself, and in particular:

- details pertaining to the taxpayer and buyer,
- details allowing to clearly identify the object of supply as the new means of transport,
- the date of delivery,
- signatures of the taxpayer and buyer,
- the buyer's declaration on the exportation of the new means of transport outside the territory of a country issued within 14 days of the date of delivery,
- the warning of the buyer about consequences of a failure to meet the obligation referred to in the above item,

- further referred to as an 'export document' (article 42 paragraph 5 of the GSTA).

If the above-mentioned documents **do not clearly prove** the fact that goods have been delivered to a buyer located in the territory of an EU country other than Poland – the proofs to confirm the fact that the intra-Community supply of goods has occurred are **also other documents** indicating the performance of the intra-Community supply of goods, and in particular:

- commercial correspondence with the buyer – including their order,
- documents concerning insurance or freight costs,
- a document confirming payment for the goods,
- a proof confirming that the buyer has received the goods in the territory of a member state other than the territory of the country.

It should also be borne in mind that, in order to be able to report the intra-Community supply of goods with a 0% rate, one must acquire the above-mentioned documents before the lapse of the time limit for filing a declaration for a given settlement period, i.e. a month or quarter in which tax liability in respect of the intra-Community supply of goods has occurred.

However, to keep on the safe side, it is advisable to always gather all documents related to a transaction and remember to always use proper identification numbers of both the parties to the transaction in the documents. Both the buyer and taxpayer carrying out the supply of goods must have a proper and valid

VAT - cont.

identification number for intra-Community transactions, containing a two-letter code used for value added tax purposes.
Each element of the collected documentation may prove to be useful – in particular if one takes into account the judgment of the Lower Administrative Court (LAC) in Szczecin of 26 May 2010 (file No. I SA/Sz 191/10) that concerned formal requirements imposed on a taxpayer by the Goods and Services Tax Act in respect of taxation of the intra-Community supply of goods (comments on the judgment can be found in the 'Judicial Decisions' section of our newsletter). The situation described in the judgment is common in the business practice as is the one where the supplier has received no consignment note from the buyer which is tantamount to a failure to fulfil the statutory obligation in respect of documenting the intra-Community supply of goods. In such a case a failure to meet formal requirements, when the fact of performing the intra-Community supply of goods has been confirmed by using other proofs, may have no adverse effect on the taxpayer's position. The reasons presented by the LAC seem to be rational and logical. Provisions of article 42 paragraph 11 of the GSTA may suggest both that a taxpayer performing the intra-Community supply of goods should have documents referred to in paragraphs 3-5 and that they may use supplementary ones if those first do not confirm the intra-Community supply of goods. However, the court (rightly) maintains that the provisions ought to be understood in a different way, i.e. if there are no documents listed in paragraphs 3-5, one may still use supplementary documents. Such conclusions were also clearly confirmed by the resolution of seven judges of the Supreme Administrative Court (SAC) of 11 October 2010 (file No. I FPS 1/10). Therefore, it is advisable to always gather all documents regarding every transaction.

Example:

A taxpayer did not receive documents referred to in article 42 paragraphs 3-5 of the GSTA before the date for filing a declaration for the second month following the month in which tax liability in respect of the intra-Community supply of goods had occurred and thus reported such a supply as a domestic one bearing a 22% VAT rate. In the fifth month the taxpayer got the documents but those were the ones referred to in article 42 paragraph 11 of the GSTA, i.e. the so called supplementary ones, while they never received the documents specified in paragraphs 3-5. Based on the above-mentioned judgment of the LAC, resolution of the SAC, and the above conclusions, it is inferred that the taxpayer, as soon as they received the documents confirming the intra-Community supply of goods, i.e. in the fifth month following the month when the tax liability had occurred, should:

1. adjust the declaration in which they reported the transaction with a 22% rate (the second month following the month when tax liability had occurred), 'clearing' the domestic supply declared in it, and
2. adjust the declaration for the month when the transaction actually took place and report the intra-Community supply of goods.

One should also remember to adjust the VAT-EU summing up information for the above-mentioned months.

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HOW TO COMPILE DOCUMENTATION FOR THE INTRA-COMMUNITY SUPPLY OF GOODS (0%)?
RED = ALWAYS REQUIRED, BLUE = OPTIONAL, SUPPLEMENTARY

1. copy of a VAT invoice
2. transport documents (e.g. CMR) OR a taxpayer's own document pursuant to article 42 paragraph 4 of the GSTA OR a taxpayer's own document pursuant to article 42 paragraph 5 of the GSTA
3. specification of individual cargo units
4. commercial correspondence with the buyer
5. insurance documents/freight costs settlement
6. confirmation of the payment for goods
7. confirmation of goods' receipt by the buyer from another member state

PIT

Settlement of small orders applying flat income tax rate

Albert Einstein said that *the hardest thing in the world to understand is the income tax*. New regulations and amendments to laws do not make the taxpayer's life easier, which is exemplified by an amendment to the Personal Income Tax Act of 1 January 2009. It introduced a new provision related to the settlement of small orders by using the 18% flat income tax rate.

That tax applies solely to revenues earned from activities performed personally based on a contract to perform a specified task or a contract of mandate. Moreover, in order to apply an 18% flat tax rate to a revenue, the contractor may not be an employee of the principal and the amount of remuneration may not exceed PLN 200 in a month.

That seemingly simple provision arouses lots of doubts among taxpayers. Problems start as early as at the moment of establishing what elements should be contained in a contract to allow the application of flat income tax. First of all, it is important how remuneration is specified. As already mentioned, it may not exceed PLN 200. Also, as proved by interpretations by the Minister of Finance, remuneration must be stipulated as an amount so if a contract specifies, e.g. an hourly rate, general taxation rules ought to apply to it (i.e. taxation according to tax brackets). A question is often asked what to do if monthly remuneration set forth in a contract exceeds PLN 200 but is paid to a taxpayer in monthly instalments not exceeding the amount provided for by the act. Tax authorities construe the situation from the following point of view: the basis of taxation are amounts stipulated in a contract or contracts and not those that have been paid. Thus, irrespective of the amount paid to a taxpayer in a month, flat income tax will be imposed only when remuneration specified in a contract or contracts does not exceed PLN 200.

The act also stipulates the settlement period being a month. The basis of taxation is the sum of remunerations earned from one principal arising from contracts signed in one calendar month.

Meeting the above-mentioned conditions is the basis for considering a contract to be taxed at a flat rate. However, the situation becomes more complicated in some cases.

A good example are revenues of persons who have been ordered by public authorities, a state administrative body, self-government agency, court or prosecutor to perform specific actions classified as revenues earned from activities performed personally. That applies to such professions as expert witness, attorney, translator, custodian or lay-judge. There are no doubts as to the source of revenue, however, establishing the form of taxation poses problems. Remuneration of persons working based on a contract of mandate, e.g. for a court, often does not exceed PLN 200. In theory, flat income tax rate ought to apply to such revenues. However, it should be kept in mind that there are regulations of the Minister of Justice that specify remuneration rates for a given action performed by persons practising the above-mentioned professions. Their remunerations are not determined in advance and are prescribed by the regulation. Hence, revenue earned by lawyers, lay-judges, and other persons receiving one-off orders from state agencies should be taxed solely in line with general principles of taxation.

In general, tax authorities confirm the approach presented above. Only the Director of the Chamber of Taxes in Bydgoszcz in an interpretation of 2 April 2009 (ITPB1/415-15/09/MR) states to the contrary in respect of expert witness remuneration. That interpretation may be justified by the Regulation of the Minister of Justice of 18 December 1975 on Costs of Taking Expert Witness Evidence in Judicial Proceedings. It specifies actions that entitle to specific remuneration determined in advance. Due to that, a contract stipulates the amount of remuneration in advance with no possible change in the course of its performance and thus flat income tax may apply to that single case.

Further doubts are raised by the manner of taxation as regards revenues earned by members of management boards, supervisory boards, committees or other governing bodies of legal entities. Persons being at the same time a company's employees and members of e.g. its management board are taxed according to tax brackets, irrespective of the amount of remuneration. On the other hand, flat income tax applies to a person performing a management function in an enterprise and not being a tax remitter's employee, provided, of course, that other above-mentioned conditions are met (which is actually rather not bound to happen).

A dilemma over the proper manner of taxation occurs also in the case of revenues earned based on a contract to perform a specified task accompanied by transfer of author's economic rights. Cooperation started based on a contract to perform a specified task when the contractor is not the tax remitter's employee and monthly remuneration does not exceed PLN 200 may be taxed by applying a flat rate or according to tax brackets. A decisive factor is transfer of author's economic rights. If the fulfilment of a contract to perform a specified task is associated with the transfer of rights – the tax remitter is obliged to collect advance personal income tax. On the other hand, if a taxable person does not transfer his or her author's economic rights, flat income tax applies to remuneration earned from the contract to perform a specified task. Although such a position seems to be quite controversial, it is presented by the Director of the Chamber of Taxes in Warsaw in an interpretation of 29 June 2009 (IPPB2/415-245/09-4/MK).

Revenues earned from activities performed personally (to which flat income tax applies) are not combined with revenues taxed in

PIT - cont.

line with general principles of taxation and thus they are not reported in an annual PIT declaration. The basis of taxation is revenue that may not be reduced by costs, social security or health insurance contributions.

A tax remitter is obliged to collect flat tax accounting for 18% of revenue and then pay the amount of tax to the account of a tax office appropriate for the tax remitter's registered office, place of running business or place of residence by the 20th day of the month following the month when the tax was collected. Moreover, by the end of January of the year following the tax year the tax remitter files an annual declaration on flat income tax rate with the tax office appropriate for the tax remitter's registered office, place of running business or place of residence.

It should be borne in mind that revenues earned based on contracts of mandate and contracts to perform a specified task share the same revenue source category – activities performed personally. Therefore, if one concludes two contracts with one principal: a contract of mandate and a contract to perform a specified task, revenues from both the contracts are summed up. From 1 January 2011 the provision concerning flat income tax will be simplified. The currently announced amendments indicate that the discussed form of taxation will apply to every single contract from which no more than PLN 200 is earned. Thus, remuneration will not be summed up even if several contracts are signed with one and the same principal.

Application of flat income tax may slightly reduce administration costs on the part of a tax remitter. However, it is not always as beneficial as expected to both the parties. It should be remembered that the application of flat income tax prevents deduction of costs of revenues and a taxable person's revenue is taxed at a flat rate always when conditions provided for in the act are met. In order to avoid settlement adjustments, it is advisable to move a contract remuneration payment date to a subsequent month.

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VAT

changes for 2011 – a complicated puzzle

In principle, since entering into force of the currently applicable Goods and Services Tax Act no such major amendments to the provisions have been made. Most new regulations are badly needed but regrettably they have been introduced in a terrible hurry and thus there has been no time to put finishing touches on them. It can be seen at a single glance that a great number of provisions are incoherent and inaccurate. In consequence, taxpayers will be dogged by serious problems with proper tax settlements, which will directly result in an increased number of disputes with tax authorities. By way of consolation, it can be said that, according to the saying that every cloud has a silver lining, at least part of new regulations may soon be analysed by judicial decisions.

New Rates

In a three-year transition period tax rates differing from the current ones will apply. As for now, it is hard to tell what the future will bring. From 1 January 2011 to 31 December 2013, pursuant to the Supplementary Budget Law:

- a basic tax rate will be 23% (instead of 22%),
- a reduced tax rate will be 8% (instead of 7%) – and will apply to the majority (but beware: not all) of supplies of goods or provision of services taxed so far at a 7% rate,
- an additional reduced rate of 5% will be introduced ap plying mainly to supplies of unprocessed foods of animal and plant origin as well as specialist periodicals, musical scores, books in a paper form and audiobooks (in the l ast case a considerable reduction occurs from 22% to 5%),
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VAT - cont.

ast case a considerable reduction occurs from 22% to 5%),

- a flat tax refund rate for farmers will be raised from 6% t o 7%,
- a separate rate of 4% (previously 3%) will remain for taxi services (which, by the way is still inconsistent with EU regulations).

In connection with those changes, a principle of taxation regarding supplies of goods and provision of services at the turn of the years – i.e. before and after the change in rates – has also been introduced.

One-Off Supplies of Goods and Provision of Services

If a given action has been actually performed before the new provisions come into force, the previous tax rate ought to still apply regardless of the time when tax liability occurred.

Continuing Services

In the case of continuing services, settled in settlement periods – rates will have to be assigned proportionally by taking into account parts of the periods falling on before and after the new regulations come into force.

Advance Payments

As for advance payments received before 1 January 2011 – the previous tax rate should apply even if a subsequent part of a due amount is paid in 2011 and thus taxed at new rates.

New (Old) Exemptions

From the beginning of 2011 taxpayers will use a new Polish Classification of Goods and Services (PKWiU) of 2008, replacing the previous one of 1997, to identify goods and services. It has been expressly specified in the amending act that any changes in the new classification that may occur upon the promulgation of an amendment to the tax act, will not affect tax settlements.

Attachment No. 4 to the act, listing exemptions, has been totally deleted – applicable exemptions will be specified in new paragraphs added to article 43. The table below provides an overview of the most important modifications to the exemption catalogue.

SERVICE	COMMENTS ON THE EXTENT OF EXEMPTION
postal services	new wording allows for the provision of postal services also by a different operator than the Polish Post in the future
medical care services	exemption has been limited as to entities and activities to which it applies although not all provisions are clear – services are to 'support prophylaxis, maintenance, recovery, and improvement of health', which rather excludes, e.g. various kinds of plastic surgery
services rendered internally within municipalities, self-governments, foundations, cooperatives etc.	description of the exemption uses ambiguous terms such as e.g. 'services of immediate necessity'
social assistance services	exemption is to apply to every entity providing such services irrespective of its formal status
education services	exemption applies to services rendered by both institutions supervised within the framework of regulations concerning the system of education and any entities carrying out activities in the scope of teaching foreign languages (the last case is inconsistent with EU regulations); there will be problems with import of services' settlements – it will be difficult to check whether a foreign entity meets conditions prescribed within the framework of the Polish system of education and financing from public funds
services of political, trade union, patriotic, philosophical, philanthropic, and civic organisations	exemption applies to services to the benefit of members of such organisations performed in exchange for contributions – provided that they do not infringe free competition rules (a condition which is very difficult to apply in practice)
financial services	in its new form, the scope of exemption will be defined more clearly – mainly by introducing a more detailed description of exemptions

VAT - cont.

A general rule has also been introduced for all exemptions. It says that exemptions apply also to services being parts of a main service subject to exemption, i.e. such that can be separated from the main service but are *appropriate and necessary* for providing the basic service. Presumably, that concerns cases where the provision of a main service subject to exemption depends, at least to some extent, on the simultaneous performance of a separate component service rendered simultaneously (in a package) with the main service.

Change in the Manner of Settlements – Services of International Road Transport by Buses

The change concerns foreign carriers which from time to time carry out transports of persons by buses registered abroad in the territory of Poland. Until now settlements in respect of the goods and services tax always took place at a border customs office.
Pursuant to new regulations such entrepreneurs will have to register as active VAT taxpayers and settle the tax in line with general principles of taxation (thus, in the majority of cases, based on the length of routes covered in Poland). A bus driver must carry at least a copy of a document confirming registration for the purposes of the goods and services tax in Poland (such copies will be issued in larger numbers by a competent tax office).

Deduction of Input Tax – Real Property

Due to EU regulations Polish provisions have to directly take into account the situation where real property (and thus goods of a usually significant value) is used for both a taxpayer's economic activities and private purposes. From 2011 such real property will have parts used for economic activities and private purposes determined as percentages. Of course, exemption will only apply to the part used in running a business. Regrettably, it has not been clearly specified what methods of calculating the use proportions will be considered admissible. (Quite a considerable) risk of choosing a proper method has been transferred solely to an interested taxpayer. It is enough to draw attention to problems in determining, e.g. a total useful surface for the purposes of applying a reduced tax rate in the case of housing or a useful surface in the real property tax – now another opportunity for disputes with tax authorities is bound to occur.
Consequences of incorrect settlements may become even more unpleasant due to a necessary periodical settlement adjustment (during 10 years after real property was put into use for business purposes). Moreover, taxpayers applying reduced taxation rates or settling exemptions will have to combine adjustments arising from changes in use proportions with an adjustment resulting from a difference in rates. However, there is good news too – due to the proportional limitation of input tax deduction, the private use of real property will not need to be taxed. A provision that makes equal the free-of-charge provision of services for private purposes of taxpayers and persons related to them and lease for consideration will not apply in that case. Such a solution is certainly coherent as a system – as taxpayers may only deduct a part of input tax due to the partly private use of real property, they should not, on the other hand, pay extra tax as a result of the private use of that part of the real property.

Deduction of Input Tax – Cars

As specially permitted by the European Commission, by the end of 2012 Poland may limit the right to deduct input tax for cars whose load capacity exceeds 500 kg and total weight is up to 3.5 tons. Thus, in the case of most cars with the popular 'grate' it will not be possible to fully deduct input tax in that period. Taxpayers who have concluded lease, hire or usufruct lease contracts in respect of cars for which they are currently entitled to full deduction will enjoy that based on the principle of acquired rights provided, however, that the above-mentioned contract:

- was entered into force not later than on 31 December 2010 and
- was registered in a tax office not later than on 31 Janu ary 2011.

After the lapse of that period (i.e. beginning on 1 January 2013) a new, considerably less stringent, deduction limit will apply which should not breach the so called stand still clause – i.e. limit the right to deduct input tax to a larger degree than pursuant to regulations applicable until 30 April 2004.
From 2013 full input tax deduction will apply, among others, in respect of the following types of cars:

- vans with 1 row of seats, vanów,
- with several rows of seats and loading space accounting for at least 50% of vehicle's length,
- pickups,
- constructed in such a way that their driver's cabs and loading parts are separated,
- special vehicles,
- of small load capacity (even below 500 kg) but con structed to carry loads (and thus provided with not more than 2 seats),
- of load capacity exceeding 500 kg, with three and more seats.

It will still be absolutely impossible to deduct input tax for purchased fuel, oil or gas used to drive cars.
In a transition period (2011-2012), when the stricter deduction limit applies, the application of a provision requiring taxation of the private use of cars subject to the deduction limit will be excluded. However, it is hard to justify the fact that the same exclusion is not provided for in the provisions to apply from 2013 (i.e. the less tight deduction limit version).

Administrative Facilities – Invoice Adjustment Receipt Confirmation

New regulations waive a requirement to get an invoice adjust-

VAT - cont.

ment receipt confirmation in cases where an initial sales invoice concerned export, intra-Community supply of goods, and services that are not taxed in the territory of the Republic of Poland. The change is certainly a logical one – in such cases a reduction in the basis of taxation does not affect output tax settled in Poland anyway. However, it is worth mentioning that maintaining the requirement to have an invoice adjustment receipt confirmation in other cases is inconsistent with the EU law as a measure disproportionate to its goal (consisting in prevention of abuses).

Free-of-Charge Transfer of Goods or Provision of Services – Always Taxed

Probably from February 2011 each case of the free-of-charge supply of goods owned by a taxpayer's enterprise for private use of that taxpayer or persons related to them as well as other transfers in the form of a gift will be subject to taxation. An entirely groundless criterion of connection with economic activities will be no longer of any importance. Taxation will apply to all cases where final consumption takes place. An identical principle will apply to the free-of-charge provision of services.

Cash Registers – There Will Be More of Them and a Different Institution Will Inspect Them

From 2011 the extent of release from a duty to record turnover by means of cash registers will be significantly changed. Detailed regulations in that scope will be discussed in a separate article on page 12. Now we only wish to draw your attention to the fact that for a relatively long time every cash register will have to operate two tax rate systems – in the event returns of goods need to be settled. On the other hand, the so called 'fiscalisation' of cash registers (i.e. inspection of protection measures before data change and licensing for sale) will be done by the Central Office of Measures from July 2011. Cash register sellers will provide every cash register with a declaration on meeting technical requirements by a given appliance.

New Rules of Sending and Keeping VAT Invoices

Under the pressure of uniform judicial decisions (mostly numerous judgments of the Supreme Administrative Court), the Ministry of Finance has prepared a draft of new regulation, among others, on the manner of issuing, handing over, and keeping VAT invoices. The draft provisions provide for a possibility to send invoices in an electronic form without taking costly protective measures and keeping invoices in the same form provided that their integrity and authenticity are protected.
More information about problems with invoices in an electronic form is provided by the 'Judicial Decisions' section on page 15.

Supplies and Provision of Services for Which Tax Is Settled by the Buyer

Provisions changing principles of output tax settlements in the case of supplies of goods in the territory of the country or in the case of services rendered in the territory of the country by taxpayers having no registered office, place of residence or permanent place of running business are also in the draft phase at present. Until now the settlement of output tax by the purchaser of goods or services depended on the fact whether the taxpayer with no registered office, place of residence or permanent place of running business indicated the Polish VAT in an invoice and settled tax on their own. Amendments prescribe that such a foreign taxpayer:

- will never settle output tax,
- will issue an invoice with no tax rate or tax amount.

On the other hand, the purchaser of goods or services from such a taxpayer:

- will issue an internal invoice,
- will automatically settle output tax indicated in the inter nal invoice as input tax (where possible).

If a foreign taxpayer shows output tax in a sales invoice, a Polish buyer will forfeit the right to deduct input tax in respect of such an invoice.

Import of Services from Tax Havens No Longer Harmful

Until now it was impossible to deduct input tax if it arose from invoices documenting the provision of services by entities having their places of residence, registered offices or management boards in the territory of the so called tax havens listed in attachment 5 to the act. However, a recent judgment of the Court of Justice of the European Union has considered the regulation to be inadmissible. Thus, from February 2011 it will be possible to deduct input tax on ordinary conditions and attachment 5 to the act will be deleted. It is a long-awaited change, especially by telecommunications operators.

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VAT

Turnover recording by means of cash registers – new rules

It is high time to look into the consequences of changes introduced by the Regulation of the Minister of Finance of 26 July 2010 on Releases from the duty to keep records by means of cash registers (Journal of Laws [*Dz.U.*] of 2010, No. 138, item 930).

The currently applicable Regulation specifying actions exempted from the duty to keep turnover records by means of cash registers (Journal of Laws [*Dz.U.*] of 2009, No. 224, item 1797) ceases to be in legal force **at the end of this year**, and thus the Minister of Finance, within the framework of the delegation of legislative power contained in article 111 paragraph 8 of the Goods and Services Tax Act (Journal of Laws [*Dz.U.*] of 2004, No. 54, item 535, as amended), has specified new conditions for entities as well as entities and their actions to be exempt from the duty in respect of taxpayers carrying out sales to individuals who do not run economic activities and farmers to whom flat income tax applies.

The most fundamental change concerning the greatest number of taxpayers is **waiving the release** from the duty to record sales to individuals for the group of taxpayers rendering, among others, legal, advisory, and related services, medical services, services connected with leisure, culture, and sports as well as translators' services. The table below presents the complete list of services **that are no longer subject to exemption.**

Until now, for a taxpayer to be released from the duty to record turnover by means of cash registers, it was necessary that turnover related to the sales of exempt goods and services accounted for 70% of total sales in the preceding tax year. Beginning in the new year, that threshold will be raised to 80%. As regards taxpayers starting their economic activities, the proportion of turnover related to exempt sales to total turnover in a given tax year envisaged by a taxpayer is taken into account. In

No.	NAME	PKWiU 1997
1	other storage and warehousing of goods services – only the storage and supervision of property –	ex 63.12.14
2	storage of luggage services at train stations – provided solely by means of automated service appli-	ex 63.21.10-
3	storage of luggage services at bus stations – provided solely by means of automated service appli-	ex 63.21.10-
4	legal, accounting, and bookkeeping, market and public opinion research services, services in the scope of consultancy related to running business and management apart from services of notaries keeping rolls of deeds A and P	74.1
5	experts' services also grouped based on PKWiU, architectural and engineering services – whose	ex 74.2
6	employee recruitment and staff procurement services – whose provision by a taxpayer is fully docu-	ex 74.5
7	investigation and protection services – whose provision by a taxpayer is fully documented by an	ex 74.6
8	secretaries' and translators' services apart from printing and copying services	ex 74.83
9	other commercial services not classified elsewhere – among others, services related to credit worthiness appraisal, services provided by collection of payments' agencies – whose provision by a taxpayer is fully documented by an invoice	ex 74.84
10	services related to health protection and social care	85
11	services connected with leisure, culture, and sports to which the duty to use cash registers has not	ex 92
12	funeral and related services	93.03
13	services provided in households	95

VAT - cont.

the event the above-mentioned proportion falls below minimum values (80%), the release expires after the lapse of two months counted from the end of the first half of a year of a given period when a taxpayer enjoyed the release.

In order to limit to some extent adverse consequence of the above-mentioned changes, the legislator has introduced **a transition period** when taxpayers have time to adjust to new regulations and arrange all formalities related to it. **The final time limit for introducing cash registers by taxpayers whose activities are not exempt from the recording duty and who do not meet value and quantity requirements lapses on 30 April 2011.** However, those starting their economic activities at the beginning of 2011 or taxpayers who lost their release when the current regulation was still in force will be subject to new regulations from the first day when the new rules apply and will not be able to use the transition period either.

Despite several significant changes introduced by the new regulation, numerous issues have remained unaltered. As already mentioned, **the regulation maintains the release for taxpayers who recorded the turnover below PLN 40,000 in the preceding tax year**. In the case of taxpayers starting their economic activities in given year the turnover threshold has been set at PLN 20,000. If the above-mentioned thresholds are crossed, a taxpayer forfeits the release after the lapse of two months counted from the first day of the month following the month when the turnover threshold set for a specific group of taxpayers was exceeded in a tax year.

The legislator has also decided to maintain the catalogue of actions to which no exemptions apply, irrespective of recorded turnovers. The table below presents the full catalogue of such goods and services.

As for the catalogue of actions exempted from the duty to record sales by means of cash registers, some services related to agriculture, municipal services, transmission of utilities (in respect of supplies of energy, gas, and water), municipal transport, education, financial and insurance services or postal and express delivery services have remained in that. It should be emphasised that, when drawing up the catalogue of exemptions, the

No.	NAME
1	taxpayers carrying out activities related to sales of liquid gas
2	services related to regular and irregular passenger carriage by road vehicles except for carriage referred to in items 15 and 16 of the attachment to the regulation
3	services related to the carriage of passengers and loads by cabs
4	supply of: parts for engines (PKWiU 28.11.4), internal combustion engines such as those used to drive vehicles (PKWiU 29.10.1), bodywork for motor vehicles (PKWiU 29.20.1), trailers and semitrailers; containers (PKWiU 29.20.2), parts of trailers, semitrailers, and other vehicles with no mechanical drive (PKWiU 29.20.30.0), parts and accessories for motor vehicles (except for motorcycles) not classified elsewhere (PKWiU 29.32.30.0), internal combustion piston engines such as those used in motorcycles (PKWiU 30.91.3)
5	delivery of:
a)	radio, television, and telecommunications equipment except for electron tubes and other electronic components as well as parts for devices and appliances for sound and image operation, aerials (PKWiU ex 26 and ex 27.90)
b)	photographic equipment except for parts and accessories for photographic equipment and fittings (PKWiU ex 26.70.1)
6	supply of articles of precious metals or containing such metals which may not be subject to tax exemption referred to in article 113 paragraph 1 and 9 of the act
7	supply of CDs, DVDs, compact cassettes, magnetic tapes (including video cassettes), floppy disks, memory cards, cartridges with recordings, saved data or saved computer software packages, including those sold with user's licences
8	supply of articles meant to be used, offered to be sold or used as engine fuels or as additives or admixtures to engine fuels, irrespective of their PKWiU symbols
9	supply of tobacco products (PKWiU 12.00), alcoholic beverages with the content of alcohol exceeding 1.2 % as well as alcoholic beverages being the mixture of beer and alcohol-free beverages whose alcohol content exceeds 0.5 %, irrespective of their PKWiU symbols, except for supplies of goods referred to in item 42 of the attachment to the regulation

VAT - cont.

new Polish Classification of Goods and Services (PKWiU) of 2008 has been used (the previous regulation was based on the PKWiU classification of 1997).
The legislator has decided to maintain a provision regarding taxpayers rendering their services to a small number of customers, however, its application depends on meeting two conditions:

- every service provided by a taxpayer to an individual not carrying out economic activities is documented by a VAT invoice containing, in particular, details identifying the customer and he number of all above-mentioned service -providing operations in a preceding tax year did not exceed 50 while
- the number of customers using those services did not exceed 20. In the case of taxpayers starting their economic activities in the second half of a year, the above-mentioned thresholds are 25 and 10 respectively.

As a result of the entry into force of the new regulation the situation of some professional groups is going to become slightly more complicated. That applies mainly to such professions as physician, attorney or sworn translator. Beginning in the new year, in the event they do not meet exemption conditions specified in the regulation, they will be obliged to keep records by means of cash registers in respect of services provided to clients being individuals who do not carry out economic activities. However, the requirement to have a cash register does not need to be satisfied as at the date of the new regulation's entry into force because the Minister of Finance, in order to reduce the consequences of the introduced changes as well as give taxpayers more time for technical and organisational adjustments, has set the final date for installing cash registers to be 30 April 2011.

Example 1
Peter is a sworn translator and starts his one-man business on 3 January 2011. On 17 March 2011 he exceeds the turnover threshold of PLN 20,000.
In such a case he will be obliged to install a cash register beginning on 1 June 2011.

Example 2
Elisabeth is an attorney and runs a legal office specialising in services for small and medium enterprises. However, occasionally her clients include individuals not carrying out economic activities. There were 14 such persons in the preceding tax year. Also this year there should be not more than 20 such persons.
Pursuant to the new regulation Elisabeth will not be obliged to issue sales slips for her clients.

Example 3
Gregory is a physician employed with a local hospital. Also, once a week he runs his own practice where he sees his patients. His annual turnover in respect of running the private practice is about PLN 35,000.
The obligation to install a cash register does not apply to the above-mentioned case (until Grzegorz exceeds the turnover value threshold).

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The KZWS Group of Advisory Companies is the only firm in Poland being part of RSM International, the 6th largest network of independent advisory and auditing companies with more than 730 offices in more than 70 countries.

More information about RSM International is available on www.rsmi.com.

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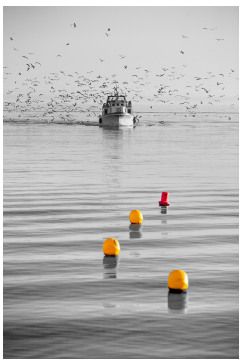

We present below interesting court judgments that may prove to be useful in interpreting ambiguous regulations.

It is always better to know where traps have been set...

Judgment of the Lower Administrative Court in Szczecin (I SA/Sz 191/10) 0% Rate on the Intra-Community Supply of Goods

The judgment of the Lower Administrative Court (LAC) in Szczecin concerns formal requirements imposed on taxpayers by the Goods and Services Tax Act (Journal of Laws [*Dz.U.*] of 2004, No. 54, item 535, as amended) related to taxation of the intra-Community supply of goods. In the said case a taxpayer asked tax authorities about making an adjustment of a tax declaration for a month in which the intra-Community supply of goods had been settled applying a 0% rate if it later appeared that a part of documents received from a carrier were counterfeit. The taxpayer was of an opinion that no declaration adjustment had to be submitted because they had acted in good faith and made every effort to get required documents whose proper nature they had not been able to assess on their own.

The tax authorities did not share the taxpayer's opinion. According to them, a document that has been forged may not be presented as evidence in a case because it should be regarded as illegal. As a result of the taxpayer's complaint the matter was sent to the LAC in Szczecin. Reasons for the judgment read that a party's having a forged consignment note is not tantamount to being prevented from using a 0% VAT rate if the taxpayer has other evidence indicating that the intra-Community supply of goods has actually occurred. The reasons presented by the LAC seem to be rational and logical. It is hard to agree with the tax authorities' interpretation claiming that the fact of receiving a forged document from the recipient results in a failure of the intra-Community of goods to occur and necessary application of a 22% VAT rate if the supply has actually taken place and the taxpayer has made every effort to get required documents. Moreover, such an approach is in conflict with the VAT neutrality principle.

Similar conclusions were drawn by the Court of Justice of the European Union (formerly the European Court of Justice) which in Teleos (C-409/04) case stated that the presentation of counterfeit documents whose authenticity could not be verified by a taxpayer on their own did not automatically amount to forfeiting the right to apply a 0% VAT rate in respect of the intra-Community supply of goods if the said transaction had actually occurred and could be documented in another manner (e.g. confirmation of the recipient's bank transfer).

The situation where the supplier has received no consignment note from the buyer is common in the business practice, which is equal to a failure to fulfil the statutory obligation in respect of documenting the intra-Community supply of goods. Also in this case, a failure to meet formal requirements when the fact of performing the intra-Community supply of goods has been confirmed using other proofs may have no adverse effects on a taxpayer. That position is confirmed, among others, by judgments of the Supreme Administrative Court (SAC) of 20 January 2009 (I FSK 1500/08) and of 5 February 2009 (I FSK 1882/07). Thus, if the basic set of documents does not clearly indicate that the intra-Community supply of goods has actually taken place, a taxpayer may use a replacement set referred to in article 42 paragraph 11 of the GSTA and apply a 0% rate based on that.

Let us sum it up:

1. The crucial fact is whether there really (actually) has been the intra-Community supply of goods (i.e. if the goods have been physically transported to another member state within the framework of a given supply).

2. The improper nature of a document used by a taxpayer as a proof that the intra-Community supply of goods has been performed does not preclude the taxpayer from applying a 0% rate to such a supply provided that the taxpayer has objectively not been able to establish that the document is forged.

3. Every procedure should be considered by taking into account the general neutrality principle of the goods and services tax.

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Judgment of the Supreme Administrative Court (II FSK 542/09)

Taxation in personal income tax of withdrawal of a partner from a personal partnership

The Supreme Administrative Court has recently raised the issue of personal income tax imposed on dues paid to partners withdrawing from a personal partnership due to its liquidation. A taxpayer requested tax authorities to issue a binding interpretation of tax law provisions in order to verify their position. In the taxpayer's opinion, the return of property not being part of liquidation stock-taking is not subject to taxation.

The Minister of Finance did not share that opinion, explaining that pursuant to article 21 paragraph 1 point 50 of the Personal Income Tax Act only the repayment of shares equal to made contributions is exempt from taxation, while dues repaid to a partner exceeding the value of a made contribution are taxed as revenues from proprietary rights.

Disagreeing with the issued interpretation, the taxpayer lodged a complaint with the Lower Administrative Court. In reasons for its judgment, the LAC in Warsaw stated that the repayment of contributions as a result of a personal partnership's liquidation is revenue only in its part exceeding a partner's share, while property received as a result of division exceeding that share, with no repayments to other partners, is revenue from free-of-charge performance. The court emphasised that those are partners in a registered partnership and not a partnership itself that are taxable persons in respect of personal income tax, and thus both making a contribution and later distribution of profit are tax-neutral while the division of property remained after the liquidation of a partnership is only the realisation of already taxed profits.

As a result of a cassation lodged by the tax authorities, the matter was eventually resolved by the Supreme Administrative Court. When making its resolution, the court ruled that in a case where a share contributed to a personal partnership is repaid in consequence of that partnership's liquidation, a value exceeding a partner's contribution is that partner's revenue from proprietary rights and should be taxed accordingly. As for the contribution, not only an initial one ought to be taken into account but also the partnership's profits reinvested by the partner in consecutive years that increased that contribution. Moreover, the SAC stated that a surplus over a partner's contribution calculated in that way is their taxable revenue from proprietary rights and not – as claimed by the LAC – a revenue from free-of-charge performance.

The opinion presented by the SAC seems to be justified in its part concerning taxation itself. On one hand, it would be difficult to explain a situation where profits reinvested by a partner are taxed again only because they have remained in the partnership. On the other hand, a lack of obligation to pay tax on assets currently generated by a partnership (and not earlier taxed) would be in conflict with the principle of universal taxation and equality before the law.

However, it is hard to agree with the statement that the value of shares exceeding the value of a partner's contribution should be classified as income from proprietary rights. As profits generated by a partnership and paid afterwards to its partners are treated as revenues from non-agricultural economic activities, it cannot be understood why payments exceeding the value of contributions made by a partner are classified as incomes from proprietary rights only because of the fact that the partnership has been liquidated and payments themselves are not the partnership's profit. In the opinion of the commentary's author, a value paid to a partner due to their withdrawal or due to the partnership's liquidation is the basis of taxation solely in its part exceeding the value of contributions made by that partner, while those incomes ought to be classified as incomes from non-agricultural economic activities. Judgments of the SAC are also not uniform in that scope (see: the SAC judgment of 7 October 2004 – FSK 594/04; the SAC judgment of 6 February 2009 – II FSK 1629/07; the SAC judgment of 15 January 2010 – II FSK 1283/08).

However, good news for taxpayers is that the beginning of next year is going to see amendments to provisions regulating the repayment of contributions to partners withdrawing from personal partnerships. Article 21 paragraph 1 point 50 and article 24 paragraph 3 of the Personal Income Tax Act will be amended, while article 24 will be supplemented with paragraphs 3a-3d. Pursuant to new regulations tax will be imposed on a difference between a revenue determined in accordance with article 14 of the Personal Income Tax Act and expenditures on the acquisition or taking hold of the right to shares. This amendment should finally dispel all doubts over interpretation regarding the repayment of contributions made to personal partnerships. However, the problem of source remains unsolved.

As of 2011 new law came into force and the problem of taxation on the moment of withdrawing from the partnership doesn't longer exist. The law states clearly that such profit is income from the source business activity.

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Judicial Decisions

Judgment of the Lower Administrative Court in Warsaw (III SA/Wa 566/10)

Sources of income of partners in personal partnerships

The decision concerns an individual interpretation acquired by a registered partnership in which the Minister of Finance (MF) stated that losses made on foreign currency options may not be settled together with incomes from the partnership's economic activities because in that case two separate sources occur: 'economic activities' (the partnership's operating activities) and 'capital gains' (realisation of foreign currency options). Disagreeing with such a resolution, the partnership complained against the interpretation to the LAC. The court dismissed the complaint, hence accepting the Minister of Finance's arguments.

The view put forward by the LAC badly affects taxpayers running economic activities in the form of a personal partnership who have borne high costs of realising adverse foreign currency options in the Polish zloty's weakening period. It is also dangerous to those partners in personal partnerships whose partnerships generate various kinds of revenues potentially classified as 'capital gains'. It should be emphasised that costs classified as the 'capital gains' source prevent taking sustained losses into account in the calculation of taxable income related to the 'economic activities' source. In consequence, it may occur that a taxpayer has to pay tax on income earned from the 'economic activity' source while they report a loss related to the 'capital gains' source at the same time. It should also be kept in mind that there is a very limited possibility to settle such a loss because it may reduce a taxable income solely in relation to the same source and exclusively in respect of an income to be possibly generated in the future.

The analysed issue has been recently subject to numerous individual interpretations and decisions of administrative courts. When issuing individual interpretations, tax authorities invariably take a position stating that capital gainsare the proper source in that case. Only a complaint against such an interpretation to administrative courts offers hope for a different resolution as there are considerable discrepancies in judicial decisions. In legal relations there are both decisions prescribing the classification of foreign currency options as the 'economic activity' source (e.g.: I SA/Po 295/10, I SA/Wr 1424/09) and decisions indicating the 'capital gains' source (e.g.: I SA/Ol 149/10, I SA/Łd 1190/09).

As for now the Supreme Administrative Court has not taken a stance. However, that is bound to change soon as most decisions made by the LACs on that issue are not in force (which means that they have been complained against to the SAC).

Let us hope that the SAC will share the opinion that losses on foreign currency options can be settled within the framework of the 'economic activities' source. Otherwise, there would be unjustified differentiation between entities able to deduct losses on foreign currency options from income earned from their economic activities and individuals running a business who are deprived of that possibility.

Judgment of the Court of Justice of the European Union (Astra Zeneca case, No. C-40/09)

VAT on issuing gift certificates

In the above-mentioned judgment the Court of Justice of the European Union adopted a stance that the company's issuing gift certificates to its employees, in exchange for giving up part of remuneration due to them, amounts to the provision of services subject to the VAT. In reasons for its judgment, the CJEU states that the transaction is part of the employer's economic activities and, as it may not be considered the supply of goods, it ought to be classified as rendering services.
It is quite a surprising resolution because, until now, the CJEU was of an opinion that such transactions are not subject to the VAT (C-288/94 Argos Distributors Ltd v. Commissioners of Customs & Excise and C-126/88 Boots v. Commissioners of Customs & Excise). The view presented in the discussed judgment is also in conflict with solutions adopted in Poland. Until now a generally accepted opinion (by both tax authorities and administrative courts) was to consider gift certificates identification marks – money substitutes. In consequence, their issue to employees was not subject to the goods and services tax. Only their exchange for goods or services was taxed. The CJEU did not take those arguments into account at all, passing over the analysis of the gist and function of gift certificates in trade.
The discussed judgment excites a lively controversy at present

as the end of the year is a period when entrepreneurs issue Christmas gift certificates to their employees.
Thus, questions occur about the possible consequences of the discussed judgment. It should be kept in mind that on one hand – in accordance with the current Polish legal environment – both tax authorities and administrative courts are obliged to abide by the European law in its broad meaning. That means that, when deciding tax issues, they may not construe regulations in such a way that it is in sharp conflict with the view put forward by the CJEU. On the other hand, it is hard to imagine a situation where an entity making the legal analysis of a transaction completely disregards the previous heritage of Polish judicial decisions and doctrine arguments. The more so as the discussed CJEU judgment offers no counterarguments to the previous Polish interpretations.
Therefore, the analysed decision has undoubtedly made the situation much more complicated. However, latest press reports allow to be more optimistic about the issue. An article by Gazeta Prawna ('Tax Authorities: No VAT on Christmas Gift Certificates for Employees' of 23 November 2010) indicates that the Minister of Finance still adheres to the view that the VAT does not apply to the issue of gift certificates to employees. Thus, hopefully – despite the above-mentioned judgment – the manner in which gift certificates are treated in respect of the goods and services tax will not change.

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Judgment of the Lower Administrative Court in Poznań (I SA/Po 194/10) Issuing and keeping of invoices in an electronic form

The judgment of the Lower Administrative Court in Poznań of 23 June 2010 (I SA/Po 194/10) raised the issue of drawing up and sending an invoice in the PDF format and its further printing and keeping in a paper form. Initially, a taxpayer requested the Director of the Chamber of Taxes in Poznań to issue an interpretation in that scope. The authority decided that the procedure described by the requesting party was in conflict with the law and the taxpayer was not able to deduct the amount of input tax.

The taxpayer did not agree with the resolution of the tax authority and thus lodged a complaint with the court. In the above-mentioned judgment, the LAC in Poznań emphasises that the Goods and Services Tax Act (Journal of Laws [*Dz.U.*] of 2004, No. 54, item 535, the consolidated text as amended) specifies neither the form of sending nor the format of issuing an invoice. Directive 2006/112/EC stipulating the manner of issuing invoices, on which national regulations are based, is of crucial importance to legislation. Although Polish legal regulations are dependent on EU law, some discrepancies can be found. That applies to the Regulation of the Minister of Finance of 25 May 2005 on the Issue of Invoices (Journal of Laws [*Dz.U.*] of 2005, No. 95, item 798, the consolidated text as amended). It stipulates that an invoice issued in an electronic form must be kept also in such a form. The LAC reached quite an interesting conclusion that rather than looking for discrepancies between Polish regulations and the EU directive, the national law ought to be construed in such a way so that it is consistent with provisions of the Community law. As indicated by the court, two fundamental conclusions can be drawn from the EU law: member states may allow – as another method – sending invoices and making those available in an electronic form without the necessary confirmation by means of an electronic signature or electronic data interchange (EDI). What is more, member states may not limit a possibility to draw up and send invoices in an electronic form solely to cases where they are kept afterwards in an electronic form too. Furthermore, the court emphasises that member states are not entitled to impose on taxpayers other formalities connected with sending invoices or making those available in an electronic form. Also, the currently binding Polish regulations should be construed in such a way so that the requirement of sending invoices in an electronic form by using an electronic signature or EDI system applies solely to those invoices that are kept in an electronic form too. If, however, invoices sent by e-mail are to be kept in a paper form, it is enough to meet requirements in respect of guaranteeing their integrity and inviolability of their content. Thus, in the court's opinion, an invoice may be sent in the PDF file form, printed, and kept in a paper form, with no breach of the binding regulations.

The judgment should be accepted because using printed in-

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voices and keeping those in a paper form do not diminish the safety of legal transactions as compared with a situation where invoices, from the moment of their issue, have a paper form.

In order to simplify the procedures and avoid similar disputes in the future, a new regulation on the issue of invoices in an electronic form is scheduled to be introduced from 1 January 2011. The liberalisation of provisions is aimed at adjusting national regulations to Community ones. The scheduled changes will apply, among others, to:

1. sending invoices in any given electronic form and format;

2. lack of obligation to confirm the integrity and authenticity of an invoice by means of an electronic signature or using electronic data interchange (EDI);

3. issuing invoices in an electronic form that does not entail an obligation to issue an invoice adjustment in the same form;

4. possibility to print and keep in a paper form invoices received in an electronic form.

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Judgment of the Lower Administrative Court in Opole (I SA/Op 215/10) Issuing and keeping of invoices in an electronic form

In its judgment of 18 August 2010, the Lower Administrative Court in Opole decided that for the copy of an invoice to be kept, its original form must be maintained and that requirement is met also by its keeping in an electronic form, i.e. in the form of an unmodifiable text file allowing to reproduce the original paper form at every request of a tax authority.
General invoice keeping rules do not specify the form of such keeping but emphasise the requirement that such a form guarantee the authentic origin of an invoice and integrity of its content throughout its keeping provided, however, that data contained in it may not be changed and must remain legible. Such conditions can undoubtedly be satisfied by keeping copies of original invoices issued in a paper form in an electronic form being their perfect reflection.
As rightly pointed out by the tax authority in the interpretation subject to the complaint, pursuant to article 19 paragraphs 1 and 2 of the Regulation of the Minister of Finance on the Issue and Keeping of Invoices, invoices and invoice adjustments are issued in at least two counterparts, the original one to be received by the buyer and the copy to be kept by the seller. An original invoice and invoice adjustment should bear an 'ORIGINAL' inscription, while the copy of an invoice or invoice adjustment ought to be provided with a 'COPY' inscription. It is not precisely indicated whether the term 'original form' refers also to the problem of issuing an invoice in a paper or electronic form. The LAC in Opole also invoked the judgment of the Supreme Administrative Court emphasising that there are no legal grounds to disallow a 'mixed' system of sending and keeping invoices, i.e. sending invoices in a paper form and keeping their copies in an electronic form while being ready to print them at every request of a competent authority. The Supreme Administrative Court eventually took a stance that the legislators themselves do not preclude a certain form of keeping information, and thus a taxpayer should be able to choose carriers while being at the same time obliged to present information to competent authorities in a form requested by them.

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A handful of details to know about us

Within the framework of our activities we also take part in numerous public initiatives. We wish to actively participate in creating and developing the young Polish economy – facilitating safe and swift start in Polish business for foreign investors but supporting domestic entrepreneurs too – from the tiniest sole traders to huge international conglomerates.

At the end of October KZWS became a partner for the **series of articles** on issues related to acquisitions of enterprises published in the **Dziennik Gazeta Prawna** daily. An article of 21 October of the current year discussing the due diligence process was Anna Kowalczyk's and Michał Dreas' press debut. We warmly congratulate the authors. We want to share our experiences and get as many members of our Team as possible involved in publications.

On 25 October of the current year KZWS was a partner of **the Investor Relations Forum** organised by **Gazeta Giełdy Parkiet** (www.parkiet.com) in Warsaw. Piotr Staszkiewicz, who prepared a lecture on the importance of auditing financial statements for investors and the market, was a speaker at the conference. We truly care about heightening economic entities' awareness of measurable benefits derived from the proper and reliable audit of financial statements.

From 29 October to 5 November of the present year Piotr Liss and Przemysław Powierza represented KZWS at an annual **RSM International world conference** which this time was held **in Cape Town in the Republic of South Africa**. An extensive programme of seminars and training courses was combined with numerous opportunities for talking with Partners in RSM International, exchanging experiences and know-how. A lot of time was spent on the issue of improving cooperation methods within the network. Our efforts are aimed at making the motto on the first page of this newsletter valid forever.

From November to January Tomasz Beger and Piotr Liss conduct classes within the framework of **the series of training courses and conferences** organised by **the Accountants Association in Poland**, dedicated to balance-sheet and taxation issues. We devote a lot of time to acquiring up-to-date knowledge and try to share it – only taxpayers aware of their rights and duties can safely optimise their tax burden.

On 2-3 December of the current year Bartosz Miłaszewski, Piotr Liss, and Marcin Kawka took part in a working conference of **RSM International** organised for European members of the network (RSM Europe) **in Budapest** and concerning the development of solutions for Clients in the scope of **Corporate Finance** in its broad meaning. The workshops covered, in particular, the issues of research related to due diligence which are of the vital importance in the conditions of the still young Polish market economy. We willingly support investors getting ready for various kinds of transformations, mergers or acquisitions by offering them our experience and expertise.

KZWS experts actively spread knowledge of finance, bookkeeping, taxation or legal aspects of carrying out economic activities. Subsequent articles have recently been **published** in the **Dziennik Gazeta Prawna** (we congratulate Mikołaj Przybył on his very successful debut) and **Rzeczpospolita** dailies with which we traditionally cooperate. Cooperation with the '**Controlling' monthly** (the Forum Publishing House) resulted in more extensive articles on issues fringing upon controlling and taxation. We especially encourage you to read texts in September and November issues.
All those interested can visit the following websites:

- www.gazetaprawna.pl
- www.rzeczpospolita.pl
- www.magazyncontrolling.pl

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