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Poland update

# Poland's introduction of joint and several liability for a proxy filing a taxpayer's VAT registration form

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## ABSTRACT

This article examines a new feature of the Polish tax system (in force since 1 January 2017)—the joint and several liability of a proxy, who has filed a taxpayer's VAT registration form, for the tax arrears of said taxpayer arising in the first six months of operation. The purpose as well as the personal and objective scope of the liability are analyzed in detail. The EU context is also considered.

KEYWORDS:

VAT registration | joint and several liability of a proxy

## Disclosure statement

No potential conflict of interest was reported by the author.

# Notes

1 Under the Polish tax procedural law, a party may act in tax proceedings by proxy unless the nature of the action requires them to act in person—see Art. 138a(1) of the General Tax Act (Ustawa z dnia z dnia 29 sierpnia 1997 r. Ordynacja podatkowa; the GTA), consolidated text Journal of Laws (Dziennik Ustaw, JL) of 2015, item 613, amended. A general proxy is authorized to act in all tax matters, as well as in other matters falling within the competence of tax authorities (Art. 138d(1) of the GTA). A specific proxy is authorized to act in the indicated tax case or another indicated matter falling within the competence of a tax authority (Art. 138e(1) of the GTA).

2 G. Poniatowski, M. Bonch-Osmolovskiy, M. Belkindas, Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report, CASE, Warszawa 2016, p. 27

3 Ibid, pp. 12–13.

4 See the Act of 1 December 2016 amending the Act on Tax on Goods and Services and Some Other Acts (Ustawa z dnia 1 grudnia 2016 r. o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw), JL of 2016, item 2024.

5 See Explanatory Memorandum (Uzasadnienie) in 'The governmental draft of 28 October 2016 of the Act amending the Act on Tax on Goods and Services and Some Other Acts' (Rządowy projekt z dnia 28 października 2016 r. ustawy o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw), VIII Term of Parliament, Sejm document no 965 (VIII kadencja, druk sejmowy nr 965).

6 See media statements of tax practitioners: A. Tarka, Zmiany w VAT: pełnomocnik ma odpowiadać za jej długi podatkowe, Rzeczpospolita of 27.09.2017, http://www.rp.pl/VAT/309279973-Zmiany-w-VAT-pelnomocnik-ma-odpowiadac-za-jej-dlugi-podatkowe.html#ap-2 [12.01.2017]. See also Information Centre for Research, Studies and Legislation of the National Council of Legal Advisers on amendments to tax laws introducing joint and several liability of proxies filing VAT registration (Informacja Ośrodka Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych dotycząca

nowelizacji przepisów podatkowych wprowadzającej odpowiedzialność solidarną pełnomocników dokonujących zgłoszenia rejestracyjnego VAT) of 21 December 2016, recommending that 'proxy documents should expressly state that its scope does not include registration for VAT purposes' (http://www.oirpwarszawa.pl/wp-content/uploads/2017/01/22.12.2016-O%C5%9Brodek-Bada%C5%84-Studi%C3%B3w-i-Legislacji.pdf [12.02.2017]).

7 OJ L 347 of 11.12.2006, p. 1.

8 See CJEU, judgment of 21 October 2010, case C-385/09 Nidera, EU:C:2010:627. The Court held that the VAT Directive should be interpreted

> as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, and who identifies himself as a taxable person for VAT purposes within a reasonable period following the completion of transactions giving rise to that right of deduction, from being denied the possibility of exercising that right by national legislation which prohibits the deduction of VAT paid on the purchase of goods if the taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.

9 See CJEU, judgment of 22 December 2010, case C-438/09 Dankowski, EU:C:2010:818. The Court held that the provisions of the common system of VAT

> must be interpreted as meaning that a taxable person has the right to deduct value added tax paid in respect of services supplied by another taxable person who is not registered for that tax, where the relevant invoices contain all the information required by Article 22(3)(b), in particular the information needed to identify the person who drew up those invoices and to ascertain the nature of the services provided.

10 CJEU, judgment of 14 March 2013, case C-527/11 Ablessio, EU:C:2013:168, para 19; CJEU, judgment of 6 September 2012, case C-273/11 Mecsek-Gabona, EU:C:2012:547, paras 57, 60; CJEU, judgment of 27 September 2012, case VSTR, EU:C:2012:592, para 51.

11 CJEU, judgment of 14 March 2013, case C-527/11 Ablessio, EU:C:2013:168, para 20.

12 See Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (the VAT Implementing Regulation), OJ L 268 of 12.10.2010, p. 1, amended, Art. 22(1).

13 CJEU, judgment of 14 March 2013, case C-527/11 Ablessio, EU:C:2013:168.

14 Ibid, para 39.

15 Consolidated text JL of 2016, item 710, amended.

16 In Poland an exempt taxpayer, i.e. a taxpayer who is exempt from VAT as a small enterprise (with sales not exceeding the threshold of PLN 200 000, circa EUR 45 000) or who exclusively carries out activities exempt from VAT, may (optionally) apply for registration as an exempt taxpayer, which does not result in losing the exempt status but in the entering of the taxpayer into a separate register of exempt taxpayers. An exempt taxpayer becomes an active taxpayer after exceeding the threshold or waiving the exemption for small enterprises, or after undertaking activities other than exempt activities. Such an active taxpayer either files a VAT registration form or—if previously registered as an exempt taxpayer—an update of the registration form resulting in the change of the registration status from ‘exempt’ to ‘active’.

17 See CJEU, judgment of 11 May 2006, case C-384/04 FTI, EU:C:2006:309, paras 29, 30; CJEU, judgment of 21 December 2011, case C-499/10 VOM, EU:C:2011:871, paras 20–22.

18 CJEU, judgment of 21 December 2011, case C-499/10 VOM, EU:C:2011:871, para 20.

19 CJEU, judgment of 11 May 2006, case C-384/04 FTI, EU:C:2006:309, para 30; CJEU, judgment of 21 December 2011, case C-499/10 VOM, EU:C:2011:871, para 22; CJEU, judgment of 26 March 2015, case C-499/13 Macikowski, EU:C:2015:201, para 48.

20 See CJEU, judgment of 11 May 2006, case C-384/04 FTI, EU:C:2006:309, paras 32–33, 35–36; CJEU, judgment of 21 December 2011, case C-499/10 VOM, EU:C:2011:871, paras 26–28.

21 CJEU, judgment of 11 May 2006, case C-384/04 FTI, EU:C:2006:309, point 32; CJEU, judgment of 21 December 2011, case C-499/10 VOM, EU:C:2011:871, point 24.

22 CJEU, judgment of 21 December 2011, case C-499/10 VOM, EU:C:2011:871, para 24.

23 CJEU, judgment of 26 March 2015, case C-499/13 Macikowski, EU:C:2015:201, paras 49–50.

24 See A. Bartosiewicz, Art. 105a, para 17, in A. Bartosiewicz, VAT. Komentarz, Wolters Kluwer, Warszawa 2016, Lex/el.


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