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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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## 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

X 3 Ibid, p 4 See th Services and Some O tku od towarów 5 See Ex of 28 October d Some Othe nie ustawy o podatku ament, Sejm do mocnik ma 6 See m odpowia http://w <u>ic-za-jej-</u> <u>dlugi-po</u> lesearch.

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' (<a href="http://www.oirpwarszawa.pl/wp-content/uploads/2017/01/22.12.2016-O%C5%9Brodek-Bada%C5%84-Studi%C3%B3w-i-Legislacji.pdf">http://www.oirpwarszawa.pl/wp-content/uploads/2017/01/22.12.2016-O%C5%9Brodek-Bada%C5%84-Studi%C3%B3w-i-Legislacji.pdf</a> [12.02.2017]).

7 OJ L 347 of 11.12.2006, p. 1.

10 CJEU

CJEU, jud

paras 57

51.

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

9 See CJ
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ht to deduct axable ices contain formation ascertain

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

58, para 19;

:2012:547,

:592, para

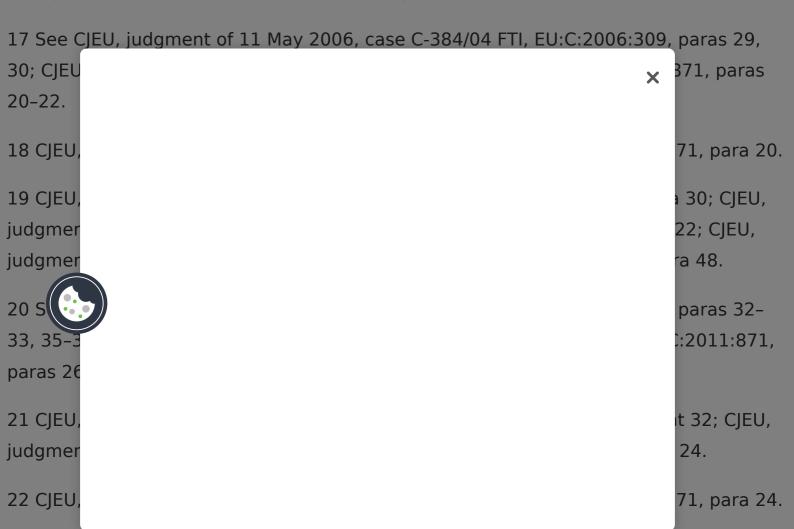
12 See Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (the VAT Implementing Regulation), OJ L 268 of 12.10.2010, p. 1, amended, Art. 22(1).

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.

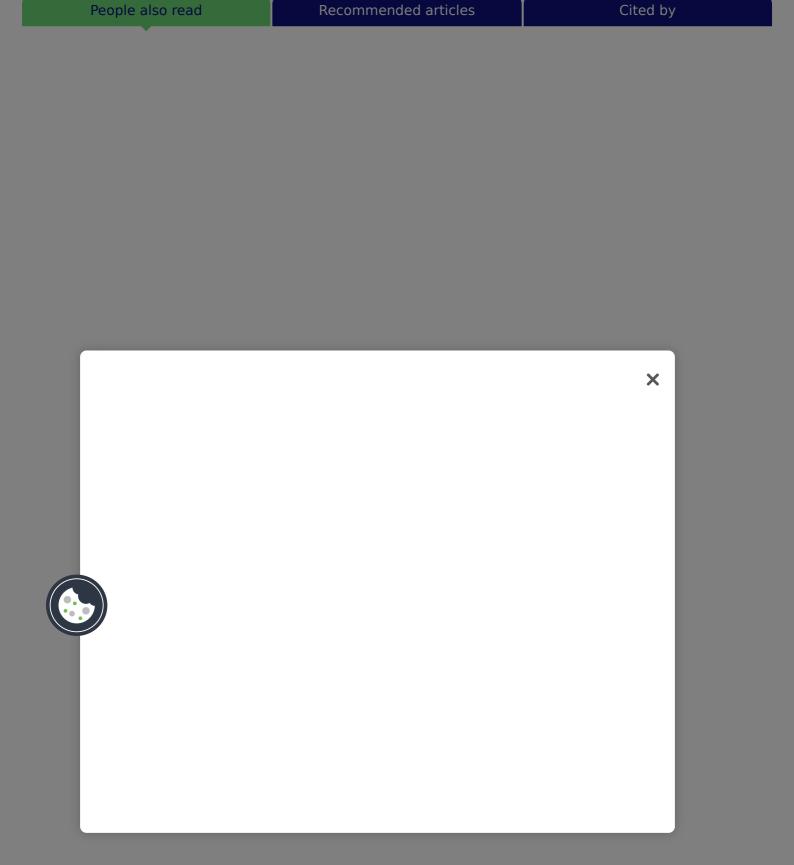
16 In Poland an exempt taxpayer, i.e. a taxpayer who is exempt from VAT as a small enterprise (with sales not exceeding the threshold of PLN 200 000, circa EUR 45 000) or who exclusively carries out activities exempt from VAT, may (optionally) apply for registration as an exempt taxpayer, which does 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'.



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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