1 2018
ISSN
2451-0920

TURNING POINT

STRONG POINT
2018 TAX POLICY – DIRECTIONS AND PROSPECTS
6

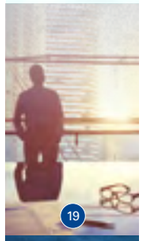
STARTING POINT
NEW ACCOUNTING STANDARDS – THE TIME TO ACT IS NOW
10

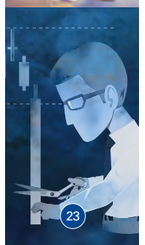
PERCENTAGE POINT
DISAPPEARING STOCK SPLITS ON THE WARSAW STOCK EXCHANGE
23

№ 1 2018

TURNING POINT

IN THIS ISSUE





5 — EXPERTS FEATURED IN THIS ISSUE

STRONG **POINT**

6 — **2018 TAX POLICY – DIRECTIONS AND PROSPECTS**
– interview with M. Michna

STARTING **POINT**

10 — **NEW ACCOUNTING STANDARDS – THE TIME TO ACT IS NOW**
– A. Opara-Kozysa

POINT BY POINT

16 — **ADVERTISING AND REALITY – WHERE EXACTLY IS THE BORDER LINE?**
– M. Komar

19 — **EXTENDED CONFISCATION AND RECEIVERSHIP OF AN ENTERPRISE – NEW REGULATIONS IN PRACTICE**
– F.J. Mohmand PhD

PERCENTAGE **POINT**

23 — **DISAPPEARING STOCK SPLITS ON THE WARSAW STOCK EXCHANGE**
– R. Karasiński

STRATEGIC **POINT**

27 — **CONSUMER MARKET – CUSTOMERS KNOW EVERYTHING AND BUY WHEREVER THEY WANT**
– J. Kalinowski PhD, A. Musiał

PENALTY **POINT**

31 — **LIMITING THE VAT SETTLEMENT WITH A THREE-MONTH DEADLINE IS NOT IN LINE WITH EU LAW**
– I. Jędra

kpmg.com/pl/en

kpmg.com/pl/TurningPoint

EXPERTS
FEATURED IN THIS ISSUE

Mirosław Michna

Partner, Tax Advisory Department at KPMG in Poland, Head of the KPMG Office in Kraków
mmichna@kpmg.pl

Alicja Opara-Kozysa

Senior Manager in Department of Professional Practice at KPMG in Poland
aopara@kpmg.pl

Michał Komar

Legal Counsel in the D. Dobkowski sp. k. Law Firm Associated with KPMG in Poland
mkomar@kpmg.pl

Fatima Joanna Mohmand, PhD

Attorney at the D. Dobkowski sp. k. Law Firm Associated with KPMG in Poland
fmohmand@kpmg.pl

Rafał Karasiński

Manager in the Transaction Advisory Team in Deal Advisory group at KPMG in Poland
rkarasinski@kpmg.pl

Jerzy Kalinowski, PhD

Adviser to the KPMG in Poland board
jerzykalinowski@kpmg.pl

Andrzej Musiał

Manager, Advisory at KPMG in Poland
amusial@kpmg.pl

Izabela Jędra

Legal Counsel, Tax Advisory Department at KPMG in Poland
ijedra@kpmg.pl

2018 TAX POLICY – DIRECTIONS AND PROSPECTS

An interview with Mirosław Michna on the 2018 tax legislation changes and their nature conducted by the "Turning Point" magazine.

» *It would be a cliché to say that the tax policy aims at accomplishing different, usually divergent, objectives and plans of the state.*

Punkt Zwrotny PZ >: A number of tax legislation changes will be introduced in 2018. What is their direction?

MIROSŁAW MICHNA (MM):
It would be a cliché to say that the tax policy aims at accomplishing different, usually divergent, objectives and plans of the state. Undoubtedly, one of these goals is to tighten up the tax system, understood here as achieving a situation, where the tax revenue is the highest possible and paid by the highest possible number of tax-payers. However, there also exists the intention to support businesses and the general economic initiative within the society, and this signals the need for the approach of imposing public-legal burdens solely to the extent necessary to achieve the relevant the goals, as well as the need for simplifying the tax procedures related to conducting business activities. I think that this divergence makes itself felt especially strongly in the Polish reality. It seems unambiguous that in the vast majority of the provisions of the Act of 27 October 2017, on amending the act on personal income tax, the act on corporate income tax and the act on a flat-rate income tax on certain revenues earned by natural persons, entering into force 1 January 2018, the legislator's intention is, in principle, to tighten the fiscal policy and thus increase budget revenues.

PZ > Why does this project seem unambiguous?
MM > From the Explanatory Report to draft amendments to income tax acts one can learn that the purpose of these changes is, i.a., the implementation of the Council Directive (EU) 2016/1164 of 12 July 2016 laying down »

» provisions against tax avoidance practices that directly affect the functioning of the internal market (hereafter "the ATAD directive), thus, in general, to tighten up the tax system domestically and prevent unauthorised transfer of profits abroad. As a consequence, the above-mentioned provisions are aimed at reconstructing the tax base that was understated in the previous years due to the leaky tax system. The intention of the originators is to achieve a more complete implementation of principles of tax justice and the universality of taxation – that stem from article 84 of the Constitution of the Republic of Poland – in the scope related to conducting business activities. The above-mentioned rules were – according to the draftsmen – violated each time in situations where income resulting from events with economically identical effect was taxed at different levels or different rules, when this was not justified by any objective factors.

PZ › What mechanisms are planned to limit the possibility of lowering the tax base?

MM › As a result the provisions of the Act on income tax from natural and legal persons that come into force introduce a number of restrictive institutions that limit the possibility of lowering the income tax base. The basic ones are:

1. Limiting the possibility of including intangible services as tax deductible costs
This limit covers advisory services, market research, advertising, management and control, data processing, insurance costs, guarantees and sureties, as well as the costs of benefits of similar nature, and fees and charges for the use of intellectual property rights. This limitation also applies to services purchased directly or indirectly from affiliates or tax havens. The deductibility limit will apply to expenses over PLN 3,000,000 (per tax year) up to the amount of: 5% of tax EBITDA.

2. Limiting the deductibility of debt financing costs (the so-called "net value of debt financing")
TP In practice, this is a limitation of interest in relation to the amount exceeding 30% of tax EBIDTA. The net debt limit to which the new provisions shall not apply is PLN 3,000,000.

» *As a result the provisions of the Act on income tax from natural and legal persons that come into force introduce a number of restrictive institutions that limit the possibility of lowering the income tax base.*

3. Extending the limitations on foreign-controlled companies to situations where the tax paid by a foreign-controlled company is lower than the difference between hypothetical taxation in Poland and the tax effectively paid, while the passive income reaches at least 33% Simultaneously, in the scope of these regulations a number of further solutions in this area has been introduced, increasing the qualified participation that constitutes a foreign-controlled company to at least 50%, including shares of related entities.

4. In the case of the sale of shares (stocks) – or carrying out other transactions or operations, the income of which qualifies as capital gains – settling revenues and costs from such a source separately from operating costs and revenues
This automatically means that the tax loss from a capital source can only be recognized as a part of a separate source of revenues in the subsequent tax years.

The above-mentioned changes, entering into force 1 January 2018, in principle tighten the tax policy.

PZ › However, at the same time the same Ministry – in this case the Ministry of Economic Development – is drafting legal acts that aim at increasing the protection of taxpayers for the scope of the freedom of activities they are conducting. How would you comment on this?

MM › This is, of course, justified, especially when one considers that small and medium-sized businesses generate around 50% of GDP (according to data for 2014). Which changes that mitigate fiscal responsibilities, despite the general increase of tax burden, are proposed by the Polish government? These are proposed in two drafts of legal acts. Primarily in the Draft of 10 February 2017 the entrepreneurs' law and from the Draft of 27 September 2017 on the amendment of some acts in order to introduce simplifications for entrepreneurs in the tax and economic law. On 21 November the former act was submitted to the Sejm, fulfilling the objectives included in "The Plan for Responsible Development" and "The Strategy for Responsible Development." It is intended to regulate the general principles for conducting business in Poland, by reducing the risks associated with conducting business activities and increasing the willingness of entrepreneurs to take up and pursue economic activity. The assumptions and regulations contained in this legal act will constitute the implementation of the Business Constitution programme, replacing the existing Act on the Freedom of Economic Activity. As far as taxes are concerned, changes in the existing provisions can be observed in the introduction of the general principle, according to which "an entrepreneur may take any action, except for those prohibited by the law". At the same time, an entrepreneur may be obliged to a particular behaviour "solely on the basis of legal provisions". The principle of the presumption of entrepreneur's integrity (article 10 paragraph 1 of the Draft Act) requires public authorities to assume that, the entrepreneur acts "in accordance with the law, honestly and respecting good practices", unless there is evidence proving otherwise.

» *As far as taxes are concerned, changes in the existing provisions can be observed in the introduction of the general principle, according to which "an entrepreneur may take any action, except for those prohibited by the law".*

PZ › What other rules appear in these drafts?

MM › Another principle is resolving the doubts concerning the factual or legal status of the case that arise in the course of the proceedings in favour of the entrepreneur (article 10 paragraph 2 and article 11 of the Act). In such a situation, factual or legal doubts that cannot be removed will be resolved in favour of the entrepreneur. The above-mentioned principle reinforces the existing norm provided for in the Tax Ordinance. The provision of article 14 of the Draft Act – the entrepreneurs' law sets out the important aspect of the constitutional principle of legal certainty, deciding that the public authority shall not deviate from the established practice of settling cases in the same factual and legal state without a justified reason. Among the novelties one can also find the provision on limiting the exercise of performing controls of business activities that in particular regulates the procedure for commencing and conducting the controls, as well as their duration. In turn the provisions of the Draft Act on the amendment of some acts in order to introduce simplifications for entrepreneurs in the tax and economic law, which were forwarded by the government, provide for the possibility of a one-off settlement of tax losses up to PLN 5,000,000 while the remaining part may be settled by the taxpayer in the subsequent years according to the current rules. The provisions also allow the creditor to reduce the tax base by the amount of the claim, if the claim is not settled or sold in any form within 120 days following the date of payment specified in the contract or invoice, while the debtor will be obliged to increase the base taxation.

PZ › How would you summarise the situation?

MM › As can be seen from the above, one can observe a certain rivalry between the elements of economic life regulated by the Minister of Economic Development and Finance who acts in two divergent roles. On the other hand, one can hope that not all of the state's efforts are directed solely at the simple increase in one-off revenues of the State Treasury. ■

MIROSŁAW MICHNA
Partner, Tax Advisory Department at KPMG in Poland, Head of the KPMG Office in Kraków
mmichna@kpmg.pl

Specialises in tax consultancy in the area of corporate income tax, tax on goods and services and personal income tax. Managed multiple projects in the field of international tax law and mergers (including due diligence projects). Has rich experience in advising in the privatization and reorganization processes of groups of companies. Advises Polish and foreign companies – particularly with regards to ongoing consultancy for companies in the automotive and industrial sectors, also in the scope of consulting entities operating in the Special Economic Zones. At KPMG he also heads a team of consultants for the automotive sector. Qualified tax consultant and legal counsel.

Companies that use International Financial Reporting Standards ("IFRS") should include in their financial statements for 2017 extensive disclosures regarding the expected impact of new accounting standards on their financial situation and on their results.

NEW ACCOUNTING STANDARDS – THE TIME TO ACT IS NOW

STARTING
POINT

The new standards in question are:

- IFRS 15 – Revenue from Contracts with Customers
- IFRS 9 – Financial Instruments
- IFRS 16 – Leases (New Standards)

The first two apply to periods starting on January 1st 2018 or later, while IFRS 16 – to the period starting January 1st 2019 or later. In October 2017, the European Securities and Markets Authority (ESMA) presented its expectations towards these disclosures, which issued the "ESMA PUBLIC STATEMENT European common enforcement priorities for 2017 IFRS financial statements", emphasizing the importance and importance of these disclosures in financial statements in entities for which the implementation of new standards may result in significant changes

ESMA – A REVIEW OF REPORTS

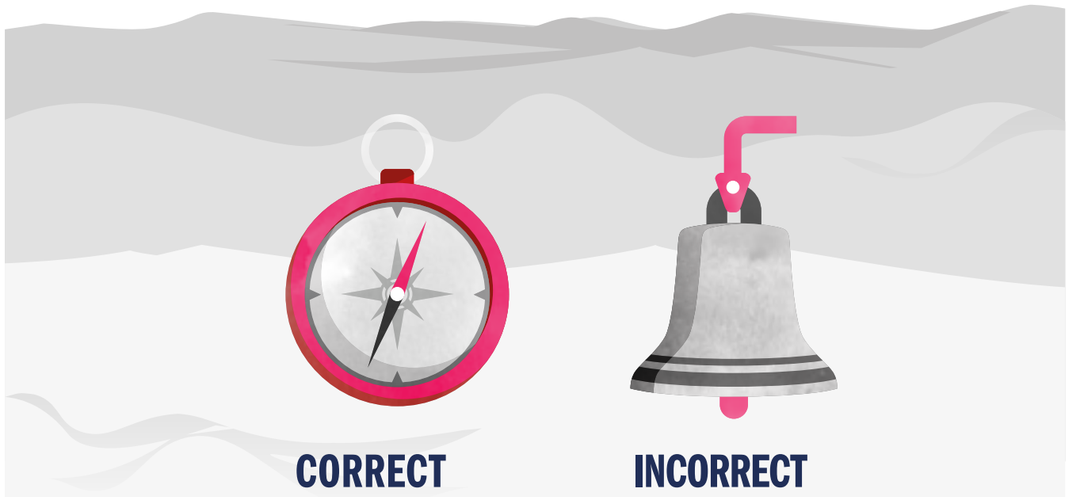
As a result of the review of the annual financial statements for 2016 and interim statements for 2017, ESMA notes that in the majority of cases, the disclosure of the impact of using new standards (or the scope of that impact) was not sufficient and often differed in terms of scope of the disclosed information, which could stem from both a lack of transparency in the implementation of new standards, as well as low precision or little confidence that companies showed towards the presented data. As a consequence of not meeting ESMA's expectations in relation to previous annual and interim reports even more pressure than in the past is exerted on individuals to provide the necessary information in annual financial reports for 2017 and on individual member states in order to strengthen their supervision over the implementation of new standards.

The basic rules of disclosing information on the impact of applying new standards

Currently, most listed companies have already reported for their 2017 interim periods. The issuers who have not complied with ESMA recommendations when it came to previous annual and interim reports, and those who have not decided to apply the new standards earlier, still face a difficult and urgent task of providing relevant information in this regard. This requirement results from paragraphs 30 and 31 of the International Accounting Standard (IAS) 8 "Accounting Policies, Changes in Accounting Estimates and Errors", which state that there is an obligation to disclose not only the very fact of this impact, but also the known or credible estimated information needed to assess the possible impact of implementing the new standard on the entity's financial statements for the period during which they will be implemented for the first time.

The company should first and foremost determine the character of future changes in accounting principles (policy) with respect to new standards, which will affect the type and scope of the description of this impact in the financial statements. Therefore, due to the approaching date of application of these standards, gradually more specific, primarily quantitative but also qualitative, disclosures regarding the impact of IFRS 15 and IFRS 9 on future financial statements of a given entity are expected. The "loophole", which some entities commonly used in previous periods, by attaching explanatory notes to the financial statements with information that the impact of the new standard is not known or it is not possible to reliably estimate it, has been definitely not longer avaliable for this year's report. In addition, the KNF Office announcement of October 2017 "regarding

» the application of IFRS 9 >>Financial instruments<< and IFRS 15 >>Revenue from contracts with customers<< and the requirement for issuers to provide relevant disclosures", stated that it is insufficient to provide any template and general statements regarding the possible impact of implementing the above standards. The information provided should be specific to the given entity, and should not cause unnecessary chaos and lead to inclusion extensive descriptions in the reports copied from the new standards verbatim. The following table identifies and compares several basic principles regarding disclosures:



	CORRECT DISCLOSURES	INCORRECT DISCLOSURES
01	Are specific to the given entity	Contain template and general statements
02	Reflect the company's actual state of readiness to implement new standards	Are copied verbatim from the provisions contained in the new standards
03	Include non-aggregate quantitative and qualitative information	Contain general descriptions without providing quantitative data and/or refer to aggregated data
04	Allow the users of financial statements to assess the actual impact of new standards	Do not provide the basic information needed to assess the actual impact of the new standards
05	Allow for a full comparison of existing accounting regulations and those that will be implemented	Do not contain complete information which would allow for a comparison of the current situation to the effect of changes, about to be implemented, in accounting principles

What are the good practices for disclosures regarding IFRS 15?

The first application of IFRS 15 when replacing the existing IAS 11 "Construction contracts", IAS 18 "Revenues" and accompanying interpretations require companies to implement new rules, which will often result in a significant change in the revenue recognition date and / or the value of sales revenue, as well as the need to make different, more extensive than before disclosures in the financial statements. Readers of these reports have the right to know, in advance, the impact that the planned changes would have on the companies' results. That is why it is so important for entities, and issuers in particular, to make quick and effective preparations to disclose the expected impact in reports that are published before the standard is implemented for the first time.
Sales revenues are one of the most important measures of the assessing the scale of one's business activity and the level of material gains, either achieved or due. Issuers ignoring the obligation to present the quantitative impact of the application of IFRS 15 may consequently result in improper preparation of disclosures in the financial statements.
The importance of the issue and the need to coordinate activities undertaken by companies from various European Union (EU) countries also resulted in the publication of "ESMA PUBLIC STATEMENT Issues for consideration in implementing IFRS Contracts with Customers 15: Revenue from Contracts with Customers". The document contains, inter alia, directions on information disclosed by issuers which expect a significant impact of the application of this standard. In such case, it is necessary to disclose primarily information about significant accounting (policy) principles that will be implemented for the first time, such as:

- applied retrospectively to the cumulative effect of the first application of this standard as an adjustment to the opening balance of retained earnings (or another part of equity) in the annual reporting period of the first application date,
- cumulative revenue adjustments,
- applied practical expedients regarding the existence of a significant financing components of or additional costs to fulfil a contract.

The burden of new disclosures is carried primarily by issuers who achieve revenues on the foundation of long-term contracts with customers or contracts containing numerous, separate embedded contractual terms. Such entities include, for example, telecommunications companies, construction industry (real estate) companies, aviation, defense industry and IT (software) companies.

The recipient of the report should, based on the disclosures, be able to understand the scope of the application of the standard (whether it involves modifying the revenues value and / or the date of revenue recognition) and the most important reasons that result in changes in the comparison of the company's current accounting policy under IAS 11 and IAS 18 to accounting principles that will be implemented. According to ESMA, IFRS 15's implementation implies the need not only to expand and improve the quality of information disclosed in the reports published until now, but also to disclose quantitative data in the form of reliable estimates of the impact of the standard implementation in the annual report for the financial year 2017.

What scope of information should financial institutions and companies from outside the financial sector disclose regarding the impact of the new IFRS 9 standard?

The new IFRS 9 standard, adopted by the EU in 2016, largely replacing IAS 39 – Financial Instruments: Recognition and Measurement, is often, wrongly, ignored by companies outside the financial sector. It can also, however, pose a challenge for them. It introduces fundamental changes in classification principles and in assessment of financial assets, as well as a new model for determining expected credit losses in order to determine impairment write-offs, and changes in hedge accounting; each point concerns not only financial institutions. The financial market will be interested in the disclosures about the impact of the new standard, in particular on credit institutions due to the new method of financial assets classification and the impairment model based on expected losses classification. On the other hand, these entities should be interested in determining the impact as quick as possible, since the introduction of new rules will often require changes in both their IT and risk management systems. "ESMA PUBLIC STATEMENT Issues for consideration in implementing IFRS 9: Financial Instruments" indicates that financial institutions may be interested in the potential impact »

» of the new standard's implementation on prudential indicators and on the sufficient level of disclosures of management estimates and judgements regarding the model for determining impairment write-offs. Nevertheless, one must not forget that readers of other institutions' financial statements may also be looking for information on the impact of IFRS 9 implementation. Therefore, ESMA issued recommendations on disclosures for all entities that expect significant impact of the new standard. As in the case of IFRS 15, entities should disclose data about significant accounting (policy) principles that will be applied for the first time, such as:

- the accounting policy choice to continue to apply the hedge accounting requirements in IAS 39,
- the option to early apply the requirements for the presentation of the fair value changes arising from credit risk on financial liabilities designated at fair value through profit or loss under the fair value option, or the option to irrevocable designate equity instruments at fair value through other comprehensive income.

The reader of the report should be able, based on the disclosures, to understand the nature of the impact and the main reasons resulting in changes, by comparing the practice currently applied by a company, in accordance to IAS 39, to the policy that shall be implemented, in accordance with IFRS 9.

The following figure contains ESMA's basic expectations regarding the scope of disclosures made especially by non-financial institutions:

DISCLOSURES FOR ISSUERS OUTSIDE THE FINANCIAL SECTOR

01 **Disclosures of the IFRS 9 implementation in a manner proportional to the importance of financial instruments used in the company's business activity.**

02 **Describing and determining the quantitative impact of the most significant effects of IFRS 9 implementation.**

03 **Disclosure in the new model regarding impairment, which applies to all financial assets, including "other financial assets", such as investments in corporate bonds that are not measured at fair value based on financial result.**

04 **Disclosure on the assessment of the impact of requirements regarding impairment through trade receivables, in particular when a significant increase in credit risk occurred.**

05 **Disclosures on the impact of the implementation of the new hedge accounting model.**

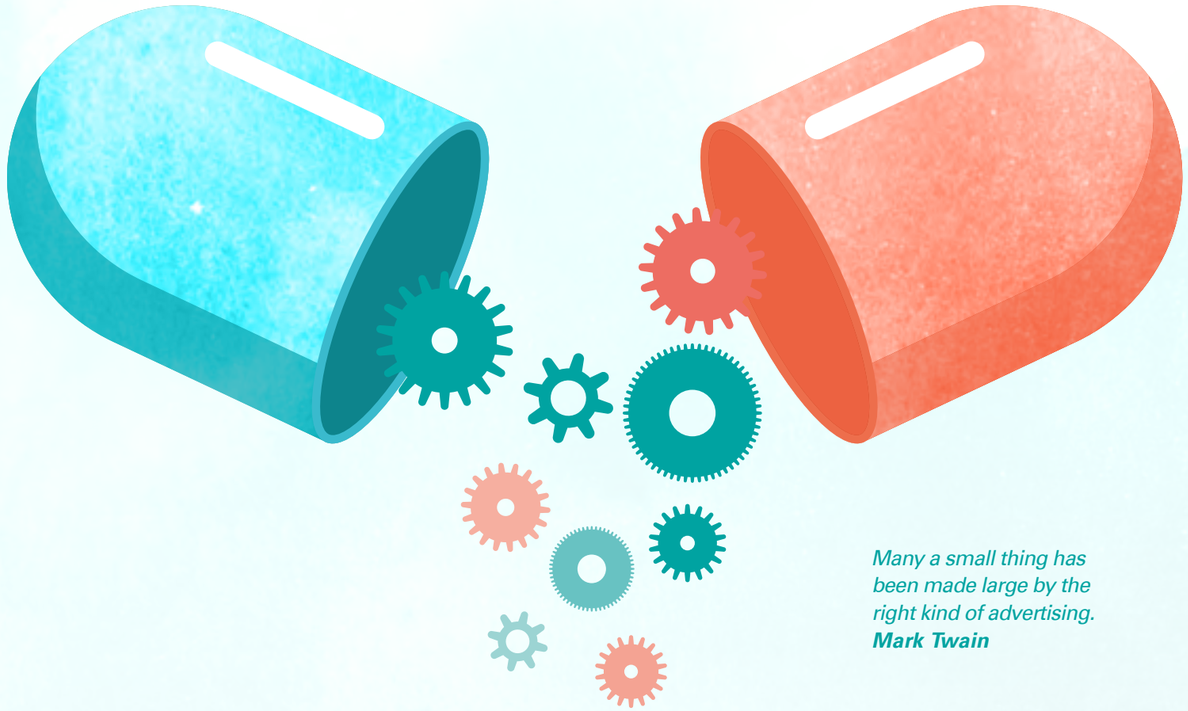
Why disclosure of the IFRS 16 impact may require less work on the part of the entity?
In relation to IFRS 16, the matter seems not only a bit more straightforward, but also more distant for most companies due to the later date of the first application of the standard. According to IFRS 16, which was adopted by the EU on November 9th 2017, the existing division into operating and finance lease will cease to exist as soon as January 1st 2019, thus introducing a new definition of lease and a new division: lease and provision of services. Due to the fact that all contracts that meet the definition of a leasing will be placed in the assets and liabilities of the lessee, ESMA in the already mentioned statements regarding priorities, reminds us of the requirement to disclose high quality information in accordance with paragraph 35 of IAS 17 – Leases (still in force), information regarding future minimum lease payments due to a non-cancellable operating lease divided into periods, regarding a general description of the terms of the lease agreements and regarding the amounts of lease payments recognized in the financial results. There is no doubt that the information provided by the disclosures made in accordance with IAS 17 can help users of financial statements to initially assess the potential impact on future financial statements, after the new standard will have been applied. Nevertheless, the fact does not exempt companies from disclosing other additional qualitative data (e.g. specific contractual terms) or quantitative information, including estimation of the expected impact on future periods.

What actions should be taken if the implementation of new standards is delayed?
Lack of proper practical and training background for employees may cause significant delays in preparing for the new regulations implementation. As the dates of the first application of standards approaches rapidly, the management of entities that use IFRS should feel obliged to analyse the actual stage of standard implementation immediately, as this is necessary for the correct functioning of the financial reporting system in the company. As a result of this analysis, appropriate measures should be taken to raised the companies' readiness to implement new standards to the desired level. When considering the nearing date of standards implementation and while interpreting the requirements provided in this respect by ESMA and the KNF (Polish Financial Supervision Authority), the companies should already be at an advanced stage of implementation of the above-mentioned standards in order to appropriately disclose information in the financial statements for the financial year 2017. ■

New IFRS 15, 9 and 16 standards discussed here have a potentially significant impact on many entities in Poland. Nevertheless, the possibility of applying them by entities to earlier periods still raises uncertainty and doubts among managers of the financial and accounting departments. It also adds to the incorrect perception of the disclosure requirement, in financial statements, of the potential impact of new standards on future reporting periods.

ALICJA OPARA-KOZYSA
Senior Manager in Department of Professional Practice at KPMG in Poland
aopara@kpmg.pll

She has many years of experience in analysing and reviewing of individual and consolidated financial statements made in accordance with, among others the Accounting Act and IFRS, she is also an expert in other attestation and related services. A member of a specialised DPP since September 2016, which main task is giving substantive support to other KPMG departments, providing practical solutions, guidelines and other materials required to solve technical issues in the following areas: financial reporting, applied methodology of a given service, auditing standards, and the interpretation of related national and EU regulations. She has been working in KPMG since 2005. A a certified auditor.



Many a small thing has been made large by the right kind of advertising.
Mark Twain

ADVERTISING AND REALITY – WHERE EXACTLY IS THE BORDER LINE?

Advertising accompanies us at every step, reaching us through various channels. Its message may play an important role in shaping consumer choices, which is why the understanding of the regulations that govern this is so important. A special case is the drugs and dietary supplements market – especially when considering that Poles rank among the top European populations in terms of the amount of both they use.

'Permitted advertising', i.e. what exactly?

Today, advertising has become an inseparable part of the sales process. It not only informs customers about a given product, its properties, and its price, but is aimed rather at evoking the need, in buyers, to obtain specific goods or to use certain services. It is extremely important that the advertising message itself does not deviate from reality, and the product presentation stays true to its actual properties – so it does not mislead consumers.

In the field of legal regulations, the advertising message is required, above all, to be honest. Advertising should not, therefore, mislead consumers and thus influence their decision in the purchase of goods or services. It also cannot appeal to consumers' emotions by causing fear, exploiting superstitions or the gullibility of children. The advertising message itself should also be clearly separated from all the other information. In particular, surreptitious advertising is banned, this involves using journalistic content in the mass media to promote the product - when the advertiser has paid for the advertisement, but it is not made clear that this is, in fact, an advert from its content, or images and sounds easily recognisable by the viewers/listeners of the message.

Violation of the provisions of the regulations of drugs and dietary supplements advertising carries the risk of an administrative ban on the continuation of such advertising, imposition of fines or even criminal liability.

Apart from the general rules applicable to the advertising of all types of goods and services, the specific provisions regulating the turnover of certain types of goods and the provision of specific types of services, create specific rules for advertising them.

Special rules for advertising specific goods

The law in the case of particular types of consumer goods specify various types of restrictions or prohibition in terms of advertising. For example, the law does not allow the advertising of alcohol (except beer, but not cider) and tobacco products. For a year now, this ban on advertising also includes electronic cigarettes.
Looking at the scale of expenditure incurred in the advertising of various types of consumer goods, attention is drawn in particular to the very large expenditures on the advertising of drugs and dietary supplements. At the same time, it is precisely at these products that specific regulations of advertising apply.
In the case of medication, the provisions of the Polish Pharmaceutical Law distinguish between public advertisement and the advertising addressed at persons authorized to issue prescriptions and who trade in drugs (in particular physicians and pharmacists). Public advertising can only apply to non-prescription drugs. Prescription drugs, on the other hand, can only be advertised to persons authorised to issue prescriptions or sell medication.
Medicine advertising directed at patients cannot feature persons known to the public, physicians or pharmacists. It also cannot suggest that not taking a drug may worsen a patient's condition or guarantee that taking it will provide the right effect, is not accompanied by any adverse reactions, or that the effect is better or the same as with any other treatment or with treatment using a different medicine.
Provisions regarding dietary supplements have less restrictive regulations on advertising. When advertising these types of products, information provided to consumers cannot, in particular, attribute to them actions or properties which they do not have, for example medicinal properties. In addition, the provisions under the food law, which regulate the marketing and advertising of dietary supplements, determine the list of health claims allowed for use in the advertising of products containing particular types of nutrients. For example, for products containing vitamin C one of the permitted health claims is that it "helps in the proper functioning of the immune system" (Annex to Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health.

Irrespective of the supervision of the advertising of particular types of products through appropriate inspections, the President of the Office of Competition and Consumer Protection (UOKiK) is the competent body to challenge advertising addressed to consumers. UOKiK powers include protecting consumers from practices that violate their collective interests. The practices infringing collective consumer interests include in particular unfair market practices and acts of unfair competition, including unfair advertising.

State authority supervision over advertising and self-regulation

The supervision of compliance with the regulations governing the advertising of specific products is in the hands of the state authorities, within their area of competence. Pharmaceutical inspection supervises the advertising of medication, while sanitary inspection supervises the advertising of dietary supplements.

It is worth noting, however, that according to the interpretation presented by the Chief Pharmaceutical Inspector (Główny Inspektor Farmaceutyczny, GIF) the provisions of the Pharmaceutical Law in the field of advertising apply not only to products authorised to be sold as medicinal products, but also products where the presentation indicates that they are ascribed medicinal properties. Thus, in such cases the Chief Pharmaceutical Inspector is predisposed to issue decisions requiring, among others, the stopping of the unlawful advertising and the removal of the violations that were identified, and the publishing of appropriate rectifications.

Furthermore, recent UOKiK activities indicate the increased surveillance of the advertising of consumer goods, especially advertising of dietary supplements. At the beginning of 2017, the UOKiK issued a decision regarding the advertising of a certain dietary supplement (decision of the President of UOKiK of 23 February 2017, reference number RBG-610-502/16/JM/MCh-S), in which we read that it is misleading for customers to use using a phrase "type of magnesium available on the market most often recommended by pharmacists" and "a magnesium preparation most often recommended by pharmacists in Poland" without providing the foundation of such claims and by referring to the professional authority of a pharmacist. In the decision issued on October 12, 2017, the UOKiK questioned the advertisements of dietary supplements, taking the view that they mislead consumers by suggesting that such products have medicinal properties (decision of the President of UOKiK No. DOIK-5/2017, reference number DDK-61- 2/16/MBM). Regardless, the UOKiK provides on its website the information of further action taken against dietary supplements manufacturers in connection with their advertisements.

The manufacturers themselves also try to regulate the advertising of dietary

supplements. At the end of 2016, the Good Advertising Practices for Diet Supplements Code was adopted. In it, its signatories define the principles of advertising dietary supplements. The Code also provides for the establishment of a disciplinary court that will settle disputes with its provisions, regarding the compliance of dietary advertisements. Similar solutions have been successfully put in place few years ago by in pharmaceutical company associations, including INFARMA, the Employers' Association of Innovative Pharmaceutical Companies and PASMI, the Polish Association of Self Medication Industry. ■

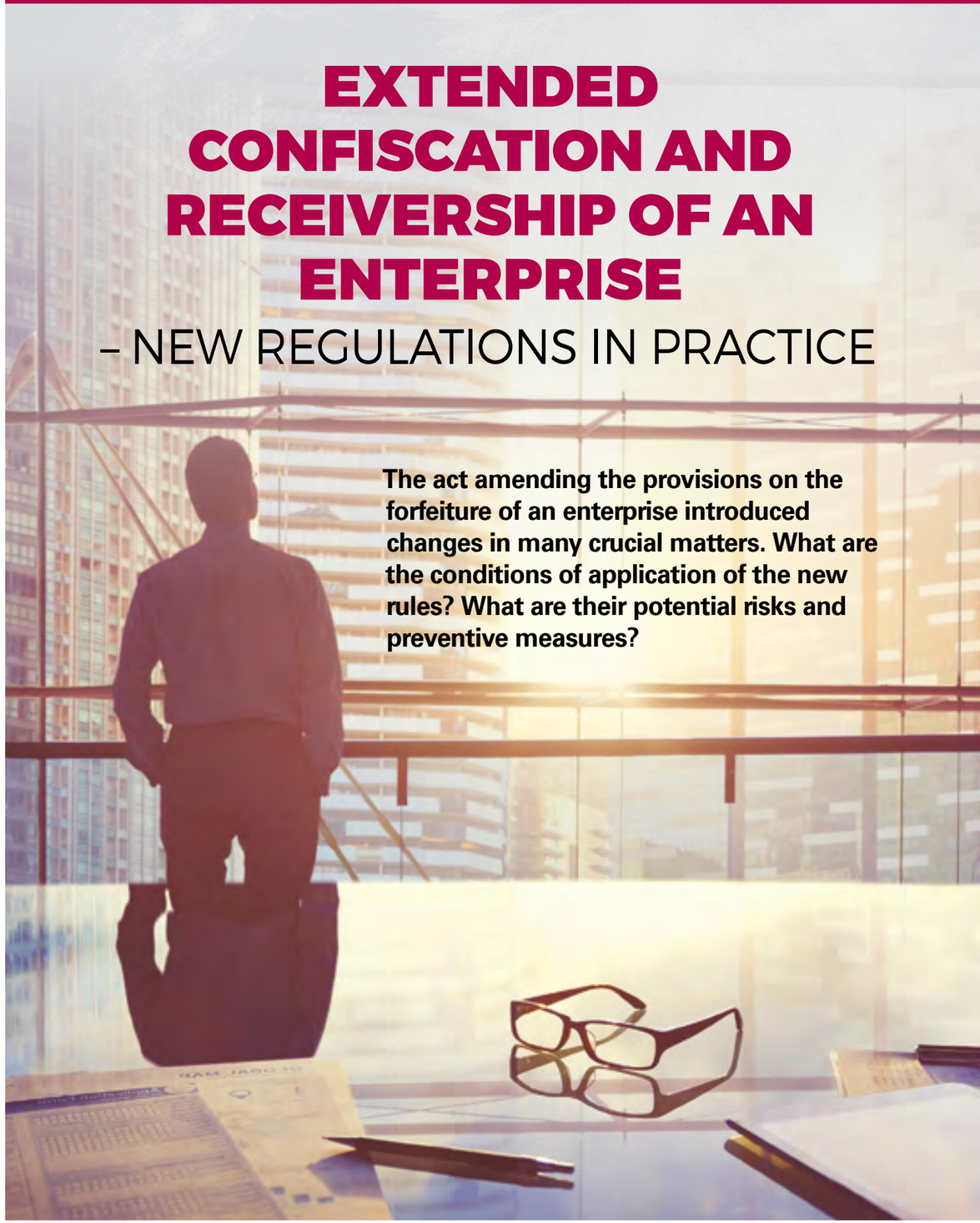
Along with the increasing advertising activity, in particular the increasing number of dietary supplements advertisements, one should expect a rise of intervention executed by the state authorities in this area. Currently, work is underway to amend the regulations on the advertising of dietary supplements, which envisage very high penalties for their violation, ranging up to millions of zlotys.

MICHAŁ KOMAR
Legal Counsel in the D. Dobkowski sp.k. Law Firm Associated with KPMG in Poland
mkomar@kpmg.pl

Specialises in pharmaceutical and medical law, mainly in issues regarding the admission of medicinal products on to the market, the marketing of medical devices, their manufacture, distribution, advertising and refunding from public funds. He also advises on the distribution of cosmetics and dietary supplements as well as the establishment and operation of medical entities.

EXTENDED CONFISCATION AND RECEIVERSHIP OF AN ENTERPRISE

– NEW REGULATIONS IN PRACTICE



The act amending the provisions on the forfeiture of an enterprise introduced changes in many crucial matters. What are the conditions of application of the new rules? What are their potential risks and preventive measures?

POINT
BY POINT

On April 27, 2017, the amended provisions of the Criminal Code on the forfeiture of an enterprise and the so-called extended confiscation (Act of March 23 2017, amending the Act - Criminal Code and several other acts, Journal of Laws from 2017, item 768) and appropriate procedural and executive changes ("Amending Act")[1]. New measures provided by The Amending Act are, in particular, the possibility of declaring the forfeiture of an enterprise and all property that originated from committing a crime, as well as a possibility of establishing a receivership in order to secure the forfeiture of the enterprise.

The decisions taken during these few months by prosecutors to secure forfeiture when establishing receivership of a company shed light on the direction that the new regulations will be applied. The decisions concern, for example:

- securing property in the case of an organised crime group which extorted legal rights to apartments on the basis of fraudulent loan agreements secured on these apartments,
- seizure of company shares belonging to suspects who are accused of being a part of a group committing a VAT and excise tax frauds,
- seizure of shares of companies owned by a certain offender's daughter, shares which were used to conceal the criminal activity of a person engaged in the mass production of marijuana.

These examples show that the spectrum of actual states in which extended confiscation can be applied is large, and the fact that it is possible to secure shares in companies controlled by the perpetrator implies that indirect consequences of extended confiscation may affect a wide range of entities which are involved in the economy.

I. Forfeiture of a company

1º The Amending Act allows for a forfeiture of an enterprise (as defined in the Article 55[1] of the Polish Civil Code), which was used as a mean to commit a crime or to hide the benefits derived from a crime or a forfeiture of an equivalent of said enterprise (especially if its components were destroyed or hidden). The movable assets (including cars, office equipment, machinery and equipment, products stored in warehouses), land and buildings, money, shares and stocks, debts, as well as patents, trademarks, copyrights, know-how will be forfeited as a part of a company. However, forfeiture of the name of an enterprise or company and moral rights included in it were explicitly excluded.

If an enterprise is a subject of co-ownership, its forfeiture shall be adjudicated taking into account the will and awareness of each of the co-owners and within their boundaries. The practical implementation of this rule, however, is not resolved and may cause many problems.

A company's forfeiture is possible when two circumstances occur:

a) a conviction for an offense in connection with which the offender obtained, even indirectly, a significant material gain (per the definition included in the Penal Code, it is a value exceeding PLN 200,000). This may include, for example, a conviction for fraud, costing an entrepreneur considerable damage through abuse of trust, and managerial bribery.

b) the confiscated enterprise was used to commit the crime or to conceal the benefit derived from it[2].

2º It is also possible to adjudicate a forfeiture of an enterprise (or its equivalent) owned by a natural person when the enterprise did not constitute perpetrator's property. In this case, the additional condition is a deliberate fault of the enterprise's owner, as the decision of forfeiture is possible only if:

- the owner of the enterprise wanted the company to be used to commit the crime or to conceal the benefits derived from it (hence the owner had a direct intent),
- anticipating such a possibility, he agreed to it (dolus eventualis). In his defence, an owner of an enterprise will have to demonstrate that, for example, he has taken steps to supervise the business partner, his intentions and took measures to exclude a risk of his business being used in committing a crime.

3º The Amending Act also introduces clauses that guarantee the proportional application of the forfeiture of an enterprise. In both cases described above, forfeiture cannot be adjudicated if:

- such step would be disproportionate to the seriousness of the offense, the degree of fault of the accused or the motivation and behaviour of the enterprise's owner, and
- the damage caused by a crime or the value of the hidden gains derived from it is not significant in comparison to the size of the business.

In addition, the court may refrain from adjudicating the forfeiture of an enterprise owned by a natural person who is not the perpetrator also in other, specifically justified cases, when such step would be a disproportionately strict punishment for the owner.

II. Extended confiscation

The perpetrator must also be prepared for a forfeiture of all property that may have been related to the crime (extended confiscation in a strict sense). The Amending Act introduces a presumption that all property that the perpetrator acquired in the span of 5 years before committing the offense, and up to even not binding (pending appeal) court judgement, constitute gain derived from a crime (eg real estate, cars, securities or other financial instruments). This presumption also applies when the perpetrator went on to sell / dispose of that property to third parties. Avoiding confiscation is possible if the perpetrator or another interested person (property owner) provides evidence that the property was acquired using legal means.

Extended confiscation may be adjudicated in the event of conviction for a crime:

- from which a property gain of significant value was achieved, even indirectly, or
- from which a property gain was or could be achieved, even indirectly, and the crime is punishable by a penalty of imprisonment, the upper limit of which is not lower than 5 years (i.e. also when the value of the damage does not exceed PLN 200,000), or
- which was committed by an organised group or an association aimed at committing a crime[3] (for instance, a group issuing false invoices).

An extended confiscation may also be used in proceedings concerning acts committed before the date it entered into force.

1 Simultaneously, a separate law introduced a similar legal structure into the Tax Penal Code, but it is not the subject of the present article.

2 This will happen if the enterprise was used as a help, a tool to achieve a goal, or at least to facilitate its achievement, for reference see Penal Code, Commentary to art. 44a, ed. R.A. Stefański, Legalis 2017.

3 Tle. there was a group of at least a three people whose aim was to commit at least one (or more) crimes.

III. Receivership

If there is a possibility of an enterprise forfeiture in a given case, the Amendment Act makes it possible to secure forfeiture by establishing, either already at the preparatory proceedings stage or during a trial course of a lawsuit, a compulsory receivership of the enterprise and by appointing a licensed restructuring advisor[4].

The earlier the compulsory management of the company is established, the greater the risk that such a decision may prove to be hasty. For this reason, a mandatory, quick two-instance judicial review of the provisions on the receivership of an enterprise was introduced. Securing of the company collapses if a court validly refuses to approve the prosecutor's decision. If a receivership is approved, the owner or other person managing the enterprise on his behalf may appeal against such a decision in a higher court. Independently, one may request the exclusion of specific assets or property rights from scope of receivership.

Summary

It is not yet certain how the institutions discussed above will be interpreted by the courts. The risks associated with them should, however, encourage enterprises to undertake both preventive and controlling measures. In particular, this applies to companies from more risky industries, such as fuel industry, construction, financial services, etc.

Such measures may include, in particular, suitably tailored and implemented compliance procedures that enable effective selection of business opportunities and business partners, in order to exclude the risk of the company being used or accidentally involved in illegal practices by other players on the market. In order to protect an enterprise, appropriate actions should also be taken at the transactions or joint projects and their settlement stages.

From this perspective creating and, if necessary, conducting control actions in the company are also important. In-house, timely and legally secured 'forensic' investigations can be an effective defense tool for a company, in particular in preparatory and court proceedings against contractors or partners of said company. ■

It should be emphasized that the Amendment Act provides for not only the establishment of a receivership of an enterprise owned by a natural person, but also in relation to an enterprise owned by a collective entity[5], i.e. mainly companies, if they obtained evidence indicates a high probability that the entity may be liable under this Act.

FATIMA JOANNA MOHMAND, PHD

Attorney at the
D. Dobkowski sp. K Law Firm
Associated with KPMG
in Poland
fmohmand@kpmg.pl

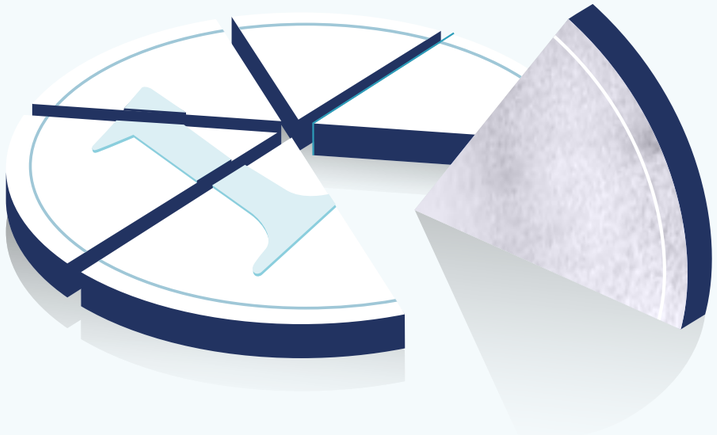
She specialises in commercial law, intellectual and industrial property as well as in court disputes related to civil and criminal liability in business.
She was in charge of a number of cases related to cyber-frauds, actions detrimental to a company resulting from an abuse of rights and money laundering. She provides comprehensive legal advice in internal investigations conducted in companies (forensic proceedings), including the selection of the most effective legal instruments used to obtain compensation for incurred damages. She manages the regional office of the law firm in Łódź.
She obtained a PhD in law at the University of Łódz. A member of the District Bar Council in Łódź.

4 As defined by the the Act of 15 June 2007 on the license of the restructuring advisor (Journal of Laws of 2016, item 883).

5 As defined by Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty (Journal of Laws of 2016, item 1541, and Journal of Laws of 2017 item 724).

DISAPPEARING STOCK SPLITS ON THE WARSAW STOCK EXCHANGE

Stock splits are a rarity on the Warsaw Stock Exchange, therefore whenever information about a split appears, it causes a lot of interest and emotions among investors. After the historical period of 2007-2008, when 34 companies split their stocks, interest in splinting clearly decreased. In the last five years, per average, only 5 companies listed on the Warsaw Stock Exchange divided their shares. We decided to explaining the somewhat forgotten subject of the stock splits and its impact on the company's value.



WHAT IS A STOCK SPLIT?

Stock split is carried out by companies whose single security is worth hundreds or even thousands of zlotys. The operation of splitting stock is by no means technically complicated. The process involves assigning the current shareholders of the company with additional shares, at the same time reducing their unit price in proportion to the change in the number of shares. Assuming that the company has 4 million issued shares with a market value of 2 zlotys each, the capitalisation of the company will amount to 8 million zlotys. Let us now assume that the company will split the shares in a 1-to-2 ratio. As a consequence, the number of shares after the split will increase to 8 million, and the reference price of one share will fall to 1 PLN. After the split, the market value of such a company should remain unchanged, at 8 million zlotys.

For example, in July 2015, PZU shareholders decided to split the shares at a 1:10 ratio. The split of shares was made by reducing the nominal value of each PZU share from 1 zloty to 0.20 zlotys and increasing the number of shares constituting share capital from 86,352,300 to 863 523 000 units. Due to the splits, there was no change in the PZU share capital. The closing price on the day preceding the split amounted to PLN 382.60, while on the first day after the split at the close of the session, the papers of the largest Polish insurer were valued at PLN 38.60.

Why do companies split their stock?

One of the main reasons for which companies carry out the split is a desire to increase individual investors' interest in their shares, which should translate into an increase in turnover and liquidity (eliminating the low liquidity discount in the company's valuation). Along with the lowering of the shares' market price, and hence their availability for a larger group of investors and with a proportional increase in the number of stocks available on the market, their liquidity is generally expected to increase. At this point, however, it should be noted that the announcement of a split is often accompanied by other positive information about the company, affecting its share price, such as news of the potential acquisition or publication of good financial results.

Another reason for carrying out a stock split may be the preparation, and facilitation, of the future recapitalisation of the company. In this case, the split function manifested itself twofold: firstly, lowering the subscription price for newly issued securities expands the group of potential investors and, secondly, there is an increase in the number of shareholders who can be encouraged to become more involved in financing capital.

In the case of the aforementioned split of PZU shares, the insurer's management pointed out the division of shares greater availability of shares for small investors, shareholder diversification and a more attractive share price for potential buyers as the main reasons for the operation. Here we should stress the fact that for the existing shareholders the split was a completely neutral, merely technical operation.

Does the stock split affect the value of the investor's portfolio?

Split shares have a neutral impact on the value of the investor's portfolio. If stock split is carried out, the investor will have more shares of the company at a proportionately lower price. After the split, the market valuation, i.e. the company's capitalization, will not change. Valuation ratios of companies, including the price-earnings or price-to-book ratios, most often used to assess investment attractiveness, will also remain the same.

We could theoretically end the article about the stock split at this stage, were it not for the fact that under certain circumstances the psychological effect of the split may cause the stock price on the stock market to change.

THE PSYCHOLOGY OF SPLIT

From an individual investor's point of view, the operation of stock split has primarily a psychological aspect. A large number of investors, while building their investment strategy, are guided by the idea that information about the split is a signal that the share price of the company is or will soon be in an upward trend, and therefore they start buying its securities, and thus – they affect the growth of its price.

Another equally important psychological aspect of the split is the fact that many investors perceive highly rated shares as expensive, which discourages them from investing in such stock. They think that if a given security costs so much, it can mean that it has already reached its maximum level, and therefore the chance for further increases is small. Thus, individual investors are more willing to trade low-value securities. Increased trading of the asset will most likely result in an increase in its value.

It is worth mentioning here that Warren Buffett, famous American stock market investor, never supported split operations in his investment strategy. In his opinion, investors should think about their investments in the long term, and high stock prices are designed to discourage them from taking short-term, risky investment positions. Buffett believes that high stock prices are a great tool to eliminate price fluctuations that do not stem from fundamental factors. Currently, the prices of some of his shares exceed $ 100,000.

CURRENT SITUATION

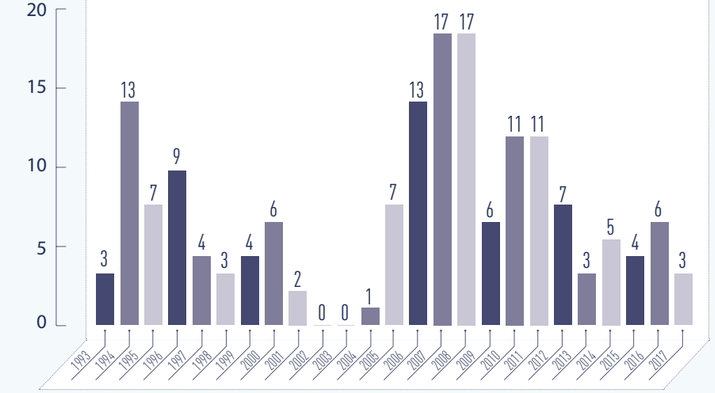
Currently, splits on the Warsaw Stock Exchange are rare.

In the first half of 2017, only three companies split their stocks, including two listed on its main trading floor..

ZFrom the analysis of press releases (or rather lack thereof), during the remaining half of the year should not bring a significant increase in the number of splits on the Warsaw Stock Exchange.

Figure **1**

Number of splits carried out on the Warsaw Stock Exchange in the 1993-2017* period



*AS OF JUNE 13TH 2017

SOURCE: KPMG'S RESEARCH BASED ON BOSSA.PL

Stock splits on the Warsaw Stock Exchange

The boom period of 2005-2008 brought about a sharp increase in the popularity of splits on the Warsaw Stock Exchange, when many companies carried them out, issuing millions of shares at very low prices. When analysing the splits of that period, one can conclude that speculative capital was a great tool for achieving quick profits. The mere announcement of a desire to carry out the operation resulted in a sharp increase in the share price, as evidenced by FON, a company which, following a release of the information on the planned split, saw its share price rise by 250%.

» Not everyone, however, decides to split...

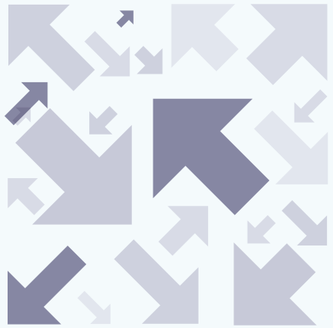
In the entire history of the Warsaw Stock Exchange, the magical barrier of 1,000 zlotys for a share was exceeded only by three companies. Interestingly, such a high price of a single share does not scare investors away, and according to publicly available information, coming from management boards, none of them plan to split the shares in the near future. On the above list, particularly the shares of the owner of one of the brands, which at the end of 2014 exceeded the Warsaw record high at 10,000 zlotys per share, deserve special attention (although it is worth noting that despite the high price of a single share, stock split is unlikely due to the privileged character of the shares held by the company's founders).

Profit, but only for the chosen few...

KPMG carried out a study of stock splits on the Warsaw Stock Exchange in 2013-2017 (as of June 13th 2017), analysing their impact on the share price after the operation. Of the 21 companies that carried out the stock split during the reviewed period, 13 were listed on the main flor, while the remaining shares were traded outside the regulated market as part of the NewConnect alternative trading system.

The analysis shows that the shares of as many as 14 out of the 21 companies are currently valued lower than directly after the split. In case of one of them, trading was suspended, and only investing in the other six companies brought profits to investors. The analysis regarding the expected long-term increase of the share value of share also brought disappointing effects. Three months after the operation, the share prices of as many as 17 companies were lower than on the day of share split, while after six months the shares of 16 companies were valued lower than on the day of the split by the market.

Similar conclusions are drawn from analysis, carried out by KPMG, of splits implemented by companies included in the EURO STOXX 600 index (the index list 600 companies from 17 European countries) in the



period from 2005 to January 2017. The analysis of 311 splits did not reveal any significant impact of this operation on a long-term share price.

A short-term positive impact of the stock split on a share price also occurred in the case of the companies from the EURO STOXX 600 index which split their shares in 2005-2006, which can be explained by the positive situation on global financial markets at the time.

In summary, the split of shares is just a technical accounting operation, which in itself should not have any impact on the long-term share price. Sometimes, however, due to an increased interest in a company caused by the division of shares, often accompanied by positive statements from the company, the price of its shares may grow rapidly. Nevertheless, in the long run, the positive effects of such an operation are questionable and (as confirmed by our analyses carried out for both the Warsaw Stock Exchange and other European exchanges) one can not rule out the continuous drop of share prices following the split. ■

RAFAŁ KARASIŃSKI
Manager in the Transaction Advisory Team in Deal Advisory at KPMG in Poland
rkarasinski@kpmg.pl

He specialises in valuations for transaction, accounting (in accordance with the requirements of financial reporting), legal, tax and other purposes. A CFA charterholder, and a licensed investment adviser.

CONSUMER MARKET – CUSTOMERS KNOW EVERYTHING AND BUY WHEREVER THEY WANT

In an increasingly competitive market, entrepreneurs are looking for new ways to reach potential customers more effectively and to distinguish themselves from competitors. These methods include developing their brand, their product and refining their service level at all points of interaction with clients. The aim of these actions is to create, in the eyes of the consumer, the best possible experiences in relation to a given brand. The greater the competition in a given sector, the more important the Customer Experience Management (CX) is.

KPMG has developed an original method for measuring the customer experience, from the perspective of the key dimensions that shape the emotions of consumers that buy and use products and services, in all the points of contact with a supplier.

Active CX management, or how not to focus on the impact of weather on the customer's mood

While analysing customer experience, we examine the so-called Six PillarsTM of Customer Experience (Figure 1), which in course of a multi-year consumer research proved to have a significant correlation with the main measures of the CX in question. These measures are commonly used by companies in Poland: both correlated with the consumer's tendency to recommend a given brand (tendency often measured with the so-called NPS) and to carry out subsequent purchases. The pillars used by KPMG explain practically about 2/3 of variability of both those business indicators. They have a deterministic character, which means that by effectively managing our Six Pillars, one can effectively build up customers willingness to recommend the brand and their desire to continue shopping. The remaining 1/3 of the variability of these indicators is most often decided by non-deterministic factors, such as weather or social moods. In the first quarter of 2017, we took a closer look at how Polish consumers perceive their experiences with suppliers from various sectors. The foundation of good customer experience in Poland? Integrity, defined as building trust and keeping true to one's word. On the one hand, such results can be explained by the relatively early stage of consumer market development in Poland (on more competitive markets in Anglo-Saxon countries we see that Integrity is given lesser significance, as it may be "taken for granted"). On the other hand, the relatively low level of trust in other people or entities expressed by the Polish people, emphasized in various sociological studies, may also play an important role here (the level of social capital in Poland is one of the lowest compared to the rest of the European Union).

Figure 1
Six PillarsTM of Customer Experience

INTEGRITY
How is the brand's promise fulfilled?

EXPECTATIONS
Does the client know what to expect?

PERSONALISATION
How to respond to individual needs?

PROBLEM SOLVING
How to turn problems into positive emotions?

TIME AND EFFORT
How not to make the use of products and services more difficult?

EMPATHY
How to empathise with the customer's individual situation?

Sector perception in Poland – firstly tangible benefits, secondly infrastructure

Respondents of the Poland-based part of the survey clearly appreciated sectors and branches which they perceived as providing a direct benefit, often associated with the pleasure of using products and services. Purchases of clothing, jewellery and electronics, travelling, dining at restaurants or going to cinema are activities that we are keen to devote time to and which are inseparably associated with positive emotions. These lines of business form a group of so-called Value Adders and in the Polish edition of the survey finished top of the list. At the other end of the spectrum, per the study, were the companies from the so-called Enablers group - entities that in everyday life allow consumers to use other products and services (eg. payment card for shopping, Internet access for watching movies, etc.).
A wider, more complex offer, complicated, frequent and long-term nature of the interaction between the client and the customer certainly creates additional challenges for these 'facilitators' (Enablers), but such order is far from obvious, as demonstrated by the results of the study in other markets. For example, the position of the financial sector in the Anglo-Saxon countries was much higher than other industries, and in the Czech edition of the survey the single highest rated entity was a bank. The results of the Polish edition may indicate that companies from the lower rated sectors need to be more active. They may seek inspiration for transformative actions among highly rated suppliers in their industry (companies that, despite low overall results of the sector, have been recognised in the survey and are among the top 100 rated brands), as well as among leaders from other branches (consumers take their expectations towards customer experience from one industry to another).

Polish consumers praise companies that are consistent in all their activities - they fulfill the promise of their brands, provide reliable information about the essential elements of their offer, and also act in the real interest of the client and do not focus only on profits.

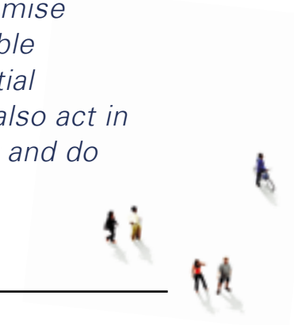


Figure 2
Information about the study

›› How to use the knowledge of the Six PillarsTM Customer Experience wisely, or why does one size NOT fit all

The Six PillarsTM of CX, which were the basis of the study, are a tool that provides a wide range of capabilities to answer the question of how to effectively improve customer experience. On the one hand, we know which pillar is crucial for consumers, and on the other we can assess how a given brand positions itself relative to its competition. This set is a good starting point to understand which areas can be key in any brand transformation. A true CX transformation, however, requires going one step further – i.e. understanding the specific needs and expectations of individual persons (characterised on the basis of customer segments) in reference to the specific pillars, and realising which pillars are key.

Subsequently, let's look at the journey map of specific personas (Customer Journey). Customer experiences can be built around different pillars depending on the specifics of a particular touchpoint (eg, the importance of Expectation at the time of the so-called customer onboarding vs. the importance of a good Personalisation of the cross-sell/up-sell offer). Identifying the key interactions, the so-called moments of truth, and understanding the negative experiences that are crucial from the client's point of view (painpoints) is the starting point for planning actions aimed at improving the CX. It is worth remembering that there are no universal solutions that fit every single one organisation. The specificity of customers, the product offer or distribution channel are aspects we have to remember about when comparing our company to the competition and planning transformation initiatives.

How to convince an organisation to transform its CX - we know how and where to play, but is the game worth it?

Another strong argument in favour of using the Six PillarsTM in designing CX transformation is realising how the activities planned around individual pillars can improve the indicators related to customer experience (loyalty, NPS). This, in turn, allows the development of a more extensive business case model by estimating the impact of changes in CX indicators on business results (for instance, improvement in revenue results stemming from new business generated through recommendations or from additional transactions by loyal customers).

Emotions that shape the experience of millenials (for example, convenience above all – the Time and Effort Pillar) can be radically different from those in the senior segment (where, for example, understanding the other person's perspective is important – hence the Empathy Pillar).

Creating a solid financial perspective with regard to the estimated impact of transformative activities is one of the key success factors for gaining adequate committment of the management and for implementing successful changes beyond the short-term perspective, or the so-called quick wins. In order to convince you that it indeed pays off, we compared the results (regarding the dynamics of change in revenues) of companies rated highly in our study (100 highest rated brands) against the background of their sector (companies from a given sector included in the WIG index) . ■

JERZY KALINOWSKI PHD
Adviser to the KPMG in Poland board
jerzykalinowski@kpmg.pl

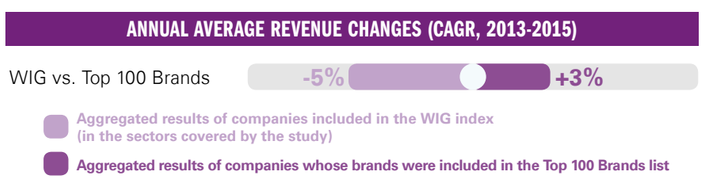
He has over 30 years of professional experience. With KPMG since 2004, he led projects in the field of strategic and operational consulting in nearly 20 countries around the world. Previously, he sat on the management boards and supervisory boards of companies from the new technologies, media and telecommunications sectors (for instance, he was the founder and president of an investment fund focused on digital start-ups). His experience also includes participation in R&D projects in the USA and in Poland. A graduate of the Warsaw University of Technology and the University of Rochester in the USA.

ANDRZEJ MUSIAŁ
Manager, Advisory at KPMG in Poland
amusial@kpmg.pl

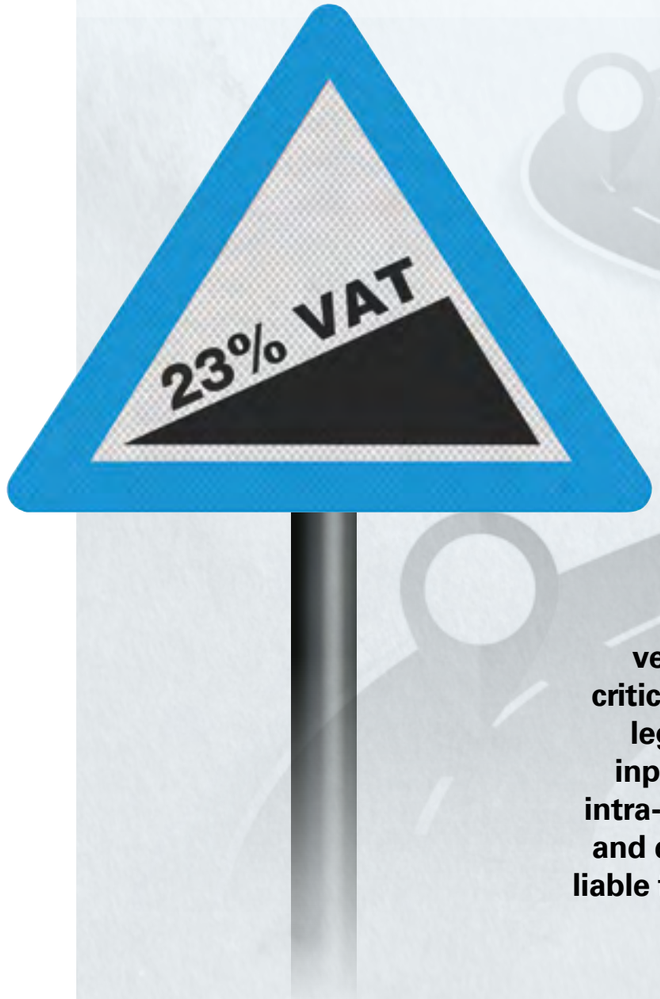
He specialises in strategic consulting, improving the efficiency of sales organization, marketing and customer service in relation to digitization and the use of new technologies, as well as refining the customer experience management. He has over 10 years of experience in implementing consultancy projects for clients in the telecommunications and new technologies, financial and consumer goods sectors.

Figure 3

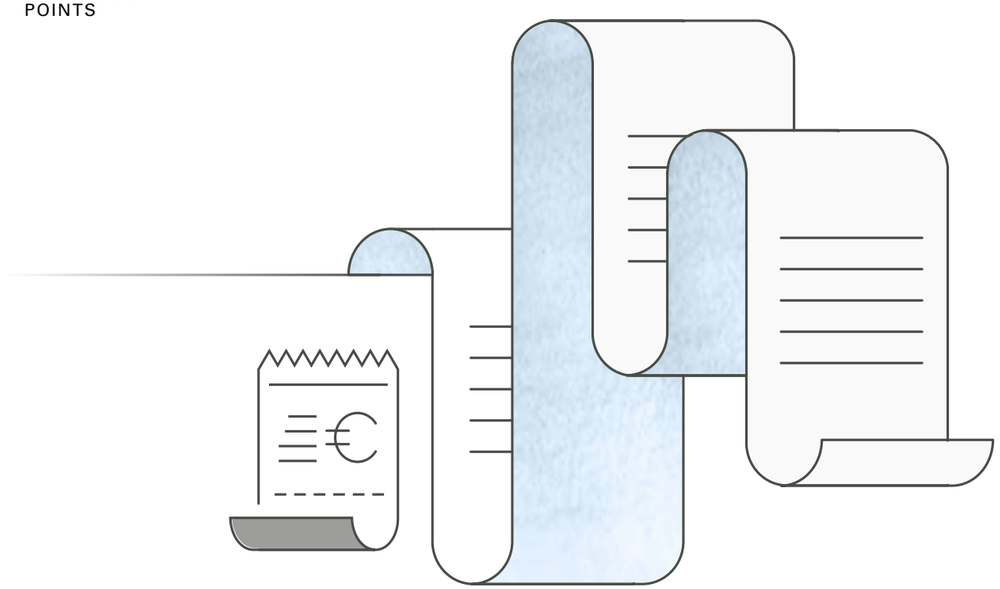
Revenue change dynamics in regards to improving customer experience management



LIMITING THE VAT SETTLEMENT WITH A THREE-MONTH DEADLINE IS NOT IN LINE WITH EU LAW



On September 21st 2017, the Administrative Court in Kraków issued important for taxpayers verdict (I SA / Kr 709/17), in which criticised the introduced by the Polish legislator changes in deduction of input VAT on the import of services, intra-Community acquisition of goods and domestic sales in which a person liable for VAT settlement is a purchaser (reverse charge mechanism).



The Administrative Court ruled that the new three-month deadline for VAT settlement is inconsistent with the Directive 2006/112. This is the first verdict that refers to the compliance of new regulations with EU law.

How it used to be

Before the new regulations entered into force, the import of services, intra-Community acquisition of goods and domestic transactions subject to a reverse charge mechanism were neutral for taxpayers (in case they did not use the proportional settlements in VAT).

The input VAT on the above-mentioned transaction was, at the same time, the amount of output VAT (Article 86 paragraph 2 point 4 of the VAT Act). The right to decrease the output VAT by the input VAT, as a rule, arose in the settlement for the same period, in which the tax point with respect to the goods and services acquired or imported arose (Article 86 paragraph 10 of the VAT Act). This meant that taxpayers placed in their VAT returns the above mentioned transactions both on the side of input and output VAT.

This principle was applied in every situation, also when the taxpayer mistakenly (due to, for example, delay in issuing or delivering an invoice from the contractor) did not report the transaction in the appropriate period. The taxpayer always had the right to correct the VAT return and to declare in the corrected VAT return both output VAT as well as input VAT. In consequence, a mistake did not lead to any negative consequences for him.

New restrictive regulations

From January 2017, the necessary condition to deduct input VAT from this kind of transactions is to report them in the proper VAT return , not later than 3 months counting from the end of the month in which tax point for given transaction arose (Article 86 paragraph 10b point 2b and Article 86 paragraph 10b point 3 of the VAT Act).

In case of delay in reporting, the taxpayer report the output VAT in the correct period, however is entitled to include the corresponding amount of input VAT on a current basis , i.e. in the VAT return for the period for which the deadline of its submission has not yet elapsed (Article 86, paragraph 10i of the VAT Act).

This means that if the taxpayer does not report correctly (in the proper VAT return) VAT on ICA or import of services and the above 3 months period passed , then he will have to report output VAT retrospectively (by submission the amendment VAT return for the period in which the tax point arose), but input VAT will have to be reported on a current basis. As a result, the transaction will no longer be neutral for the taxpayer, as tax arrears and penalty interest will arise.

CHANGES IN PRACTICE

Let's assume, for example, that a taxpayer did not report import of services from February 2017 until the end of May 2017. A three-month deadline for reporting the transaction has therefore passed.
Under the laws in force until the end of 2016, the taxpayer could correct the VAT return for February 2017 and show in the amended VAT return both output and input VAT.
Under the law in force from January 2017, the taxpayer must report the output VAT in the correction of VAT return for February 2017. The input VAT may be included only on a current basis (in the VAT return for May 2017).
Crucially, the restriction applies regardless of the reason of delay in reporting – regardless of whether it results from taxpayer's or contractor's mistake . There can be a lot of causes when the taxpayer is not to blame, for example when the contractor issued or delivered an invoice too late, the date of providing a service was incorrectly marked, or the moment when a tax point arose was incorrectly determined (the latter is particularly important, when it comes to movement of own goods from EU countries to Poland, , where doubts arise as to whether the invoice or other document issued should be seen as determining a tax point or not).

A light at the end of the tunnel

The Administrative Court in Kraków (I SA / Kr 709/17) confirmed that the new provisions of the VAT Act (Article 86 paragraph 10b and paragraph 10i) are not in line with the Directive 2006/112. In the court's opinion, they violate the basic EU principle - VAT neutrality. Per the case law of the CJEU having the right to deduct input VAT should depend only upon the fulfilment of material conditions. Consequently, no additional conditions can be imposed in regard to the taxpayer's right to deduct, conditions which

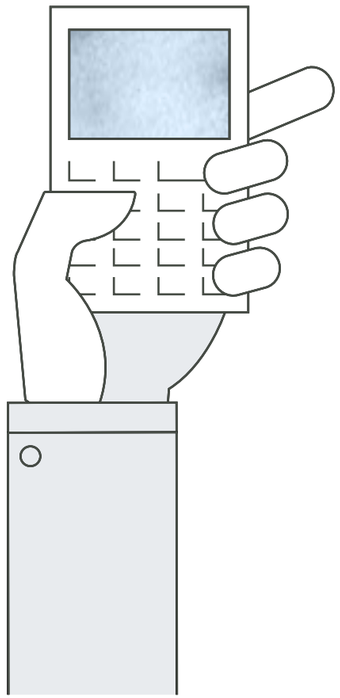
TAXPAYER'S QUESTION

The new regulations were challanged by a company purchasing services (including advisory and legal service) from foreign entities (import of services). The company applied for a binding ruling, requesting a confirmation that also under the law binding from January 2017, the Company will be entitled to deduct the input VAT on the above-mentioned transactions in the same settlement period in which the output VAT was reported, even if the amendment of VAT return will be submitted after the 3-months period.

The Head of the National Tax Information Office found the company's standpoint as incorrect, what was appealed by the company to the Administrative Court.

CHANGES IN THE DEDUCTION OF INPUT VAT IN THE IMPORT OF SERVICES, INTRA-COMMUNITY ACQUISITION OF GOODS AND DOMESTIC TRANSACTIONS COVERED BY THE REVERSE CHARGE MECHANISM

LEGAL STATUS EXISTING BY THE END OF 2016	LEGAL STATUS EXISTING SINCE JANUARY 1ST 2017.
The amount of input VAT was also the amount of output VAT. The right to deduct input VAT arose under the condition that the taxpayer declared the amount of output VAT in the proper VAT return	The necessary condition to deduct input VAT is to report the transactions in the proper VAT return , not later than 3 months after the end of the month in which tax point for given transaction arose
Consequently, in the same VAT return, the taxpayer included transactions both on the side of input and output VAT	If taxpayers do not report the output VAT correctly (in the proper declaration) and the three-month period passed, then the output VAT must be declared retrospectively (by amending a VAT return), and input VAT can be included on a current basis
The above principle was applied in every situation - also when the transactions were reported with a delay. The taxpayer submit an amendment VAT return and declare both input and output VAT	
CONSEQUENCES FOR THE TAXPAYERS	
The transactions were tax-neutral Delay in reporting of transactions did not cause any negative consequences for taxpayers	Taxpayers who report transactions with a delay bear the economic burden of output VAT – tax arrears and penalty interest arise



The provisions that came into force constitute an unjustified economic disadvantage for taxpayers, applied regardless of the gravity and scale of breach of formal requirements, and regardless of the fact that in certain cases there is no risk of fraud, extortion or deliberate understatement of one's tax liabilities.

IZABELA JĘDRA
Legal Counsel, Tax Advisory Department at KPMG in Poland
ijedra@kpmg.pl

She specialises in tax on goods and services. Has 7 years of experience in tax consulting for clients from various sectors. Has experience in providing legal services to business entities, acquired while working in the law firm, as well as knowledge gained during advocate training. A graduate of the Faculty of Law and Administration at the University of Warsaw.

» could practically prevent the enforcement of that right or cause the taxpayer to be charged with the economic burden of VAT (CJEU ruling, Case C-280/10).
According to the Administrative Court in Kraków, the new provisions also violate the principle of proportionality. According to the CJEU ruling in case C-518/14 (Senatex), taxpayers should not be punished with the postponement of the right to VAT deduction and with the interest for late payment due to non-compliance with formal conditions, if the material conditions have been met.

Consequences for taxpayers

The verdict of the Administrative Court in Kraków gives taxpayers the chance to use the regulations that were in force before 1st January 2017. Taxpayers for whom the import of services, intra-Community acquisition of goods or domestic transactions covered by the reverse charge mechanism constitute a significant part of their business, may consider applying for a biding ruling. It is true that the verdict of the Administrative Court in Kraków is the first one that addresses the issue in question, but taking into account the rulings of the CJEU, there is a good chance that the position presented by the court will be maintained by the Supreme Administrative Court and that other administrative courts will agree with it.
Obtaining a positive binding ruling would allow for safe settlement of VAT using the regulations effective before January 1st 2017 (until the potential change in the regulations in this respect). Thus, even if the import of services or intra-Community acquisition of goods was declared late, both the output and input VAT could be included in the amendment VAT return for the same period. ■

KPMG offices in Poland:

WARSZAWA
ul. Inflancka 4A, 00-189 Warszawa
tel. +48 (22) 528 11 00
fax +48 (22) 528 10 09
e-mail: kpmg@kpmg.pl

KRAKÓW
ul. Opolska 114, 31-323 Kraków
tel. +48 (12) 424 94 00
fax +48 (12) 424 94 01
e-mail: krakow@kpmg.pl

POZNAŃ
ul. Roosevelta 22, 60-829 Poznań
tel. +48 (61) 845 46 00
fax +48 (61) 845 46 01
e-mail: poznan@kpmg.pl

WROCŁAW
ul. Szczytnicka 11, 50-382 Wrocław
tel. +48 (71) 370 49 00
fax +48 (71) 370 49 01
e-mail: wroclaw@kpmg.pl

GDAŃSK
al. Zwycięstwa 13A, 80-219 Gdańsk
tel. +48 (58) 77 295 00
fax +48 (58) 77 295 01
e-mail: gdansk@kpmg.pl

KATOWICE
ul. Francuska 34, 40-028 Katowice
tel. +48 (32) 778 88 00
fax +48 (32) 778 88 10
e-mail: katowice@kpmg.pl

ŁÓDŹ
al. Piłsudskiego 22, 90-051 Łódź
tel. + 48 (42) 23 27 700
fax +48 (42) 23 27 701
e-mail: lodz@kpmg.pl

Publisher: KPMG Sp. z o.o. – ul. Inflancka 4A, 00-189 Warszawa, tel. +48 22 528 11 00, fax +48 22 528 10 09, kpmg.pl
Editor in Chief: Magdalena Maruszczak | **Managing Editor:** Krzysztof Krzyżanowski
Realization: Skivak Sp. z o.o.

kpmg.com/pl/en
kpmg.com/pl/TurningPoint