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Grant Thornton Purple Guide

June 2016

How is the government planning to increase budget receipts? What are the implications for entrepreneurs?

“Purple Guide” - a source of tax information

Dear Sirs,

the government’s priority is to tighten the tax system. The Ministry of Finance estimates that the fiscal gap that needs to be filled from enhanced tax collection, so that in 2017 the budget deficit does not exceed 3% of GDP, is minimum PLN 12 billion.

How do the above assumptions change the taxpayers’ reality? In the hereby Guide, we describe changes, both introduced and planned, concerning enhancing tax collection, tightening the tax system, tax controls and new obligations connected with transferring data to tax offices.

The General Anti-Avoidance Rule, new requirements concerning transfer pricing, the obligation to provide VAT records and other data in the Standard Audit File (SAF-T), increased tax controls without taxpayers’ involvement, tax administration reform, lowering the limit for cash transactions – these are only chosen changes that are to enter into force in the nearest future.

Especially for you, we hereby present directions of changes, new regulations, and describe how the tax reality will change and what it means for taxpayers.

We invite you to take a look!

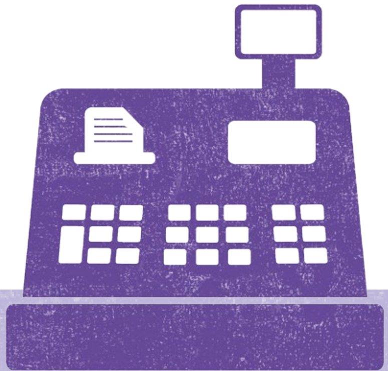
Government's financial plan – enhancing tax collection

Multi-annual Financial Plan for 2016-2019 contains planned actions related to tightening the tax system

Introduction of two new sectoral taxes have been planned for 2016:

- ► Bank tax (in effect since February 2016)
- ► Commercial tax (planned entry into force – August 2016)

The Ministry of Finance announced that no other sectoral taxes or increase of taxes are being planned at the moment.



The bank tax has been in effect since February 1, 2016. Projected proceeds from this tax amount to PLN 5.5 billion (PLN 500 million per month). The actual proceeds for the first 3 months amounted to only PLN 725 million which is below 50% of the estimated number. If the dynamics is maintained, the yearly proceeds will be lower by PLN 2.8 billion than the projected amount.

As for the commercial tax, only at the beginning of June the Council of Ministers adopted the project and submitted it to the Sejm. A probable date of its entry into force is August 2016. Originally, the proceeds have been estimated at the level of PLN 2 billion; however the current forecasts indicate that the actual payments this year will not exceed PLN 500 million.

Government's financial plan – enhancing tax collection cont.

The source of additional budget receipts are to be planned actions aimed at tightening the tax system. According to the adopted Financial Plan, these actions include:

- introducing the clause against tax avoidance,
- lowering the limit on cash transactions between companies from EUR 15,000 to PLN 15,000,
- creating the National Tax Authority, computerization of tax books controls – introduction of the Standard Audit File,
- setting up an SPV by the Treasury, which will carry out tasks connected with modernizing and developing the ICT system of the Ministry of Finance,
- creating the Register of Debtors with Public Law Liabilities which will allow to increase the tax discipline.

The government expects that realization of the above tasks within 3 years will enable to additionally obtain at least PLN 21 billion.

Chart 1.

Financial results of actions tightening the tax system in 2017-2019

Total financial results		2017	2018	2019	Total
Proceeds (in billion PLN)	min.	6.5	5.4	9.8	21.7
	max.	16.7	10.3	6.4	33.4

Source: estimates of the Ministry of Finance

Increased VAT controls

In a letter to Heads of Tax Offices and Tax Chambers, the Minister of Finance indicates which taxpayers will be controlled first.

In the Minister Szałamacha's letter of April 2016, it is stated that the priority of the tax authorities is to limit VAT extortions. In order to do so, the Tax Authorities' task is to increase the number of controls and checks, systematically cross the non-established taxpayers out from the VAT register and compare the data from the request to remove an entrepreneur from the National Court Register (KRS) with actual condition – without informing the taxpayer.

The Minister also recommended to direct all the cases of failure to file financial statements by taxpayers in due time to an analysis of fiscal penal units. The financial statements concerning 2015 should be filed by the end of July.

The document determines features or actions that identify entities worth special attention of controllers. And thus, controls shall concern the taxpayers who:

- avoid contacting tax authorities during verification activities;
- are registered in virtual offices;
- sell goods shortly after purchasing them.

As far as the scale of activity is concerned, increased controls will be applied to the entities with yearly sales revenues exceeding PLN 5 million.

Moreover, more extended use of mechanisms of securing tax receivables has been recommended. Therefore, more compulsory mortgages and tax liens can be expected. It is worth adding that under the current state of law, receivables secured this way do not fall under the statute of limitations.

General Anti-Avoidance Rule

On May 13, 2016, a change in regulations introducing a general clause on tax avoidance was enacted (and published on June 14, 2016).

Conditions to apply the clause:

The activity has been undertaken mainly in order to acquire tax gains

+

The tax gain has been contrary to the subject and aim of the Tax Act

+

The way of acting has been artificial

=

Such an activity does not result in acquiring tax gain

There exists a reasonable fear that the clause will concern optimization actions conducted before it enters into force. Since according to the text of transitional provisions, the clause will be applied to a tax gain acquired after the day when the Act enters into force.

In the original version, the clause was to be applied only to the actions conducted after the day of the entry into force of the Act.

- Tax rulings in individual taxpayer's cases issued before the entry into force of the clause keep their protective power.
- After the regulations enter into force, tax rulings will not be issued if they were to concern situations of tax optimization in the case of which the clause could be applied. In such case, a taxpayer will be entitled to request a so-called Protective Opinion.

Fee for issuing an individual tax ruling – PLN 40.

Fee for issuing a protective opinion – PLN 20,000.

- The received individual tax rulings will not have the protective power if the actual or future state included in them was a part/element of a transaction which the clause applies to.

The Act was published in the Journal of Laws on June 14 (Dz. U of 2016., item 846) and will be in effect from July 15, 2016.

New cash limit – PLN 15,000

From January 1, 2017, a new cash limit shall be effective in the case of transactions between entrepreneurs. EUR 15,000 will be lowered to the level of PLN 15,000.

The aim of the changes is to decline the grey market. An Act introducing suitable regulations was published in the Journal of Laws on June 4 (Dz. U. of 2016 r., item 780) and is entering into force as of January 1, 2017.

► Countries with a limit:

Italy
EUR 1,000

France
EUR 1,000

Greece
EUR 1.500

Belgium
EUR 3.000

► Countries without a limit:

Austria, Denmark, Estonia, Finland, the Republic of Ireland, Germany, Norway, Sweden, Great Britain

A cash payment for a transaction exceeding the limit, without intermediation of a bank account, shall result in a penalty of losing the right to recognize such expense as a tax-deductible cost.

Both the transitional provisions and the way of determining “an individual value of a transaction” which the provisions will apply to – give rise to interpretation doubts.

Experts fear that budget receipts will increase not so much because of the actual eradication of the grey market but due to disputes with entrepreneurs on the basis of the regulations excluding the possibility to recognize cash payments as tax-deductible costs.

Tax e–controls / Standard Audit File

Obligation to present data and VAT register in a Standard Audit File

From July 1, 2016 "big", then also small and medium (from January 1, 2017) and at the end micro (from January 1, 2018) entrepreneurs will be obliged to provide data concerning the VAT records in the Standard Audit File (SAF) every month without being summoned by tax authorities.

Taxpayers will be obliged to provide other financial data in the SAF only if summoned by an authority.

This way, the Ministry of Finance prepares officers and taxpayers for electronic tax controls. The Ministry published logical structures for such files (SAF structures).

SAF will enable electronic monitoring of taxpayers' actions and will be a new tool for communicating with taxpayers.

	VAT register Every month, to 25th of the following month, no summons	**Accounting books, warehouses, bank statements, invoices** Upon demand of an authority
Big entrepreneurs	From July 2016	From July 2016
Small and medium entrepreneurs	From January 2017	From July 2018
Micro entrepreneurs	From January 2018	From July 2018

Tax e–controls / Standard Audit File - cont.

What data will need to be provided:

1. Accounting books
2. Bank statements
3. Warehouses
4. VAT sales and purchase records
5. VAT invoices
6. Receipts (logical structures for it will be presented by the Ministry of Finance at a later date)

In many cases, preparing to the new requirements for providing data to tax authorities implies the need to introduce changes to IT systems and databases. Providers of popular systems declare that they will be ready to provide their clients with system upgrades or overlays for generating the SAF within the statutory deadline.

However, even in such cases, each taxpayer needs to individually verify whether they keep records of the data required by the SAF, and introduce necessary changes in the circulation of documents, tax policy and accounting rules in the company.

See dedicated SAF publication from Grant Thornton

Reform of the Tax Administration

The Ministry of Finance has announced that the National Tax Authority will be appointed on January 1, 2017.

The reform of administration shall consist in combining the tax authorities that perform analogous or similar functions for taxpayers, i.e.:

- tax offices,
- tax control offices,
- customs offices.

The aim of the reform is to consolidate actions of these offices, integrate databases and improve cooperation. The Ministry of Finance is planning to continue the realization of specialized tax offices provided that they work effectively also within the National Tax Authority structure.

There will be no continuation in the case of customs chambers and offices, tax chambers and offices, and tax control offices, which will be turned into tax administration chambers and their subordinate tax administration offices performing analogous functions.

According to the concept of the Ministry, the new customs and tax offices will deal with controlling entities selected on the basis of an analysis of risk of conducting business aiming at tax avoidance and tax fraud. The risk analysis will only be possible owing to the implementation of new IT solutions.

Powers of currently existing tax control offices will be combined with competences of customs offices and intelligence institutions in order to ensure comprehensive approach to eliminating criminal activities. According to the Ministry of Finance, the current structure is the reason why individual offices have only fragmentary data which, in isolation from the practice as a whole, does not allow to effectively detect offenders.

The draft act on the National Tax Authority was submitted to the Sejm on June 3.

Planned entry into force: January 1, 2017.

State-owned IT company – Aplikacje Krytyczne Sp. z o.o.

There has been created a state-owned special purpose vehicle (SPV) which will provide IT tools to verify the data presented by taxpayers

Implementation of new IT solutions in order to conduct a risk analysis is one of the reasons for the Ministry of Finance to establish an SPV. The Act that establishes it was published on June 4, 2016 (Dz.U. 2016 item 781).

The SPV will have access to the data from ITC systems of the Ministry of Finance, tax and tax control authorities. A list of entities that will have access to consolidated data has been extended in comparison with the original text of the project. The SPV will not be subject to the Personal Data Protection Act. Therefore, processing data will not trigger the obligation to notify persons whom the data concern. However, regulations on the protection of classified information and tax secrets shall apply.

The aim of these actions is to provide tools for the data analysis with particular emphasis on searching circumstantial evidence of infringement of the tax law. The result of the SPV operations is to increase effectiveness of VAT collection and to prevent malpractices.

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We hope that this report will be helpful to you and your company.

We kindly invite you to contact us in case of any doubts or questions you may have.