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Changes in reporting will be particularly noticeable in industries such as real estate

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From April 1, 2020, in the case of large taxpayers, it will be necessary to check regularly whether the contractor is a related entity on the basis of transfer prices, regardless of the value of the transaction - experts write.

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Pursuant to the regulation introducing JPK_VDEK reporting from April 1, 2020, taxpayers are required, among others, to indicate whether there is a connection between the buyer and the supplier of goods or service provider. The relationship is determined on the basis of transfer pricing regulations based on income taxes.

In practice, this means the obligation to analyze connections with all entities being the VAT payer, regardless of the transaction value, even if there is no formal obligation to prepare transfer pricing documentation.

The regulation introducing JPK_VDEK reporting imposes many new registration obligations on VAT payers. At first glance, it may seem that the changes should only apply to VAT-related settlements.

Nothing could be more wrong. A deeper analysis of the regulation of the Minister of Finance, investment and development of October 15, 2019 on the detailed scope of data contained in tax returns and in the records of tax on goods and services gives cause for concern. It turns out that - as in the case of many new tax regulations - the legislator went a step further.

OBLIGATION TO REPORT RELATIONSHIPS

One of the elements going beyond general VAT provisions is the obligation to indicate in the records of existing links between the buyer and the supplier of goods or service provider, referred to in art. 32 section 2 point 1 of the VAT Act. However, the aforementioned provision of the Act on tax on goods and services directly refers to the income tax provisions regarding connections in transfer prices, in particular art. 11a paragraph 1 point 5 of the CIT Act and art. 23m paragraph 1 point 5 of the PIT Act.

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It is worth reminding here that from January 1, 2019, the regulations regarding transfer prices have changed significantly. On the one hand, the content presented in the transfer pricing documentation has been significantly expanded. On the other hand, thresholds were raised from which the entity is required to prepare documentation (i.e. PLN 10 million for financial and goods transactions, and PLN 2 million for service and other transactions) and many exemptions from the documentation obligation were introduced.

The changes did not omit the provisions on relations. Although the regulations still distinguish two types of connections, i.e. capital and personal, and establish 25% participation threshold in a given entity for establishing a relationship. However, for the first time, investment funds, foreign funds and other non-company entities such as foundations, trusts and associations have been directly indicated as part of capital connections.

On the other hand, in the area of personal connections, the relationships were expanded to include the actual influence of a natural person on making key economic decisions even in the absence of other types of connections, and as the readers guess, this formulation can be interpreted very widely. In addition, 25% was also specified. the threshold of rights in control, constituting or managing bodies setting the limit of personal connections. At the same time, no changes were made in the area of family connections

REGARDLESS OF THE TRANSACTION VALUE



When transferring the said provisions to VAT, it should be noted that the obligation to record connections in JKP_VDEK is not dependent on any amount of transaction with a given entity. Consequently,

regardless of whether the taxpayer has the obligation to document transactions on the basis of transfer prices or not (e.g. uses a specific exemption from the documentation obligation), he is obliged to report every transaction with related entities in JPK_VDEK.

Therefore, starting from April 1, 2020 in the case of large taxpayers and July 1, 2020 in the case of other taxpayers, it will be necessary to conduct ongoing research whether the contractor is a related entity on the basis of transfer prices, regardless of the value of the transaction.

This will be particularly noticeable in industries such as real estate, where often for business and tax reasons individual investments are carried out by special purpose vehicles established for this purpose. Special purpose vehicles, in turn, are the property of holding entities with which they often enter into transactions (e.g. support services provided by companies from the capital group to special purpose vehicles).

SANCTIONS FOR INCORRECT REPORTING

Incorrect reporting of transactions in JPK_VDEK as made with a related entity is to result in a criminal penalty in the amount of PLN 500 for each individual error in the records.

As a result, given the amount of financial flows that is often made in one settlement period (especially in the real estate sector) and taking into account other errors that may arise, this sanction may prove to be very severe for VAT taxpayers. In addition, errors in the filed records may result in penal fiscal liability.

It is also worth bearing in mind that reporting a transaction as having been made with a related entity in JPK_VDEK despite the absence of a documentary obligation in TP may direct the tax authority's attention from our VAT settlements to documentary obligations in the context of transfer prices.

In this case, it will be easier for the authority to ask if we have completed the documentation obligations (preparation of transfer

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—Luka Komorowski, transfer pricing expert, ASB Tax

Łukasz Bączyk, partner of the ASB Tax department

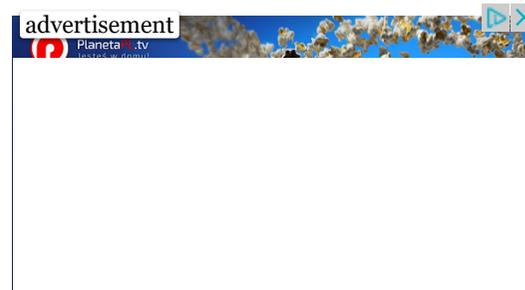
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