

The Ministry of Finance wants to limit the use of binding rate information

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The currently consulted simplification package, the so-called Slim VAT, by the way, contains provisions that - according to tax advisers - may limit the use of binding rate information (WIS). They will only be valid for three years. The Ministry of Finance also wants to withdraw the protection provided by the WIS in transactions constituting an abuse of the law. There are concerns that the authorities will interpret this clause widely and thus weaken the role of the WIS.

In the justification to the draft act amending the Value Added Tax Act and the Banking Law Act, the Ministry of Finance wrote that the current technological progress in tax settlement and the introduction of analytical and protection tools against VAT fraud, including JPK_VAT, STIR, SENT, MPP (split payment mechanism), online cash register system, the so-called white list, enabling the Head of KAS to efficiently verify taxpayers' settlements, contributed to tightening the settlements and collection of tax on goods and services. It also stated that for this reason, it is possible to introduce changes aimed at simplifying the tax settlement. The problem, however, is what tax advisers signal that apart from simplifications, the draft also includes other changes that will have a rather opposite effect. One of the examples is the planned amendment to the rules for issuing binding rate information (the so-called WIS).

WIS will have a limited validity

- The Ministry of Finance announced a new stage in the approach to taxpayers and focus on simplifying taxes. First of all, the VAT regulations are to be reduced from unnecessary, bureaucratic regulations. Of course, the announcements of changes favorable to taxpayers should be commended. However, there are some disturbing signals indicating that in the course of changes for the better, regulations unfavorable for entrepreneurs will be smuggled in. **It is about weakening the role of binding rate information, which was supposed to be a tool to protect taxpayers against arbitrary decisions of the tax office** - confirms Arkadiusz Łagowski, tax advisor, partner at Martini i Wspólnicy law firm.

As the expert points out, first, the Ministry of Finance plans to take back the protection provided by WIS in abusive transactions. There are concerns that the authorities will interpret this clause widely and thus weaken the role of the WIS. Secondly, the Ministry of Finance proposes establishing a regulation under which the WIS will be valid for a period of three years from the date of its issuance.

The law will be retroactive

Importantly, this limitation is also to be introduced for those WIS that have already been issued before the entry into force of this amendment, which raises doubts as to whether it is consistent with the constitutional principle of non-retroactivity.

- **The introduction of a three-year validity period of the WIS would significantly worsen the situation of taxpayers.** Until now, they could count on the fact that the WIS is valid indefinitely, unless it is changed ex officio due to an error or a change in the statistical classification - notes Arkadiusz Łagowski.

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Abuse of the law will exclude protection from WIS

The planned changes are also surprised by Dorota Pokrop, tax advisor and partner at EY. The expert points out, first of all, to the exclusion of the protective power of binding tax information.

- The instrument itself has recently been made available to entrepreneurs who, for the first time, could clearly confirm the correctness of the VAT rates applied by them. And this is binding on the tax authorities. Priceless comfort – he notes.

However, he points out that the **planned amendment presents a dangerous trick for tax authorities. If the obtained WIS is part of a transaction that will be considered an abuse of law, the taxpayer will not be able to use the protective power of the WIS** .

According to the Ministry of Finance, changes in this respect are necessary. The Ministry confirms that they are aimed at securing the interest of the state budget against possible abuses by dishonest taxpayers who may use the WIS received in transactions constituting an abuse of law. There is no justification for granting a taxpayer legal protection related to obtaining WIS if it is found that the subject of WIS is an element of economic transactions which he has shaped in order to obtain an undue tax advantage, contrary to the purpose of tax regulations.

An important definition of an abuse of law

It is worth recalling here that Art. 5 sec. 5 of the VAT Act defines the abuse of law as the performance of an activity within the framework of a transaction which, despite meeting the formal conditions laid down in the provisions of the Act, was essentially aimed at obtaining tax benefits, the granting of which would be contrary to the purpose of these provisions.

- **It is not at all obvious what this abuse is, and it should be remembered that our definition is the result of numerous judgments of the Court of Justice of the EU, so it is clearly a controversial topic, as well as subsequent judgments may affect what actually such an abuse is** . And since the topic is not obvious, entrepreneurs may lose the comfort they have just gained. So another "Pandora's box" will open, which will surely end in many litigation. Since the WIS is issued by the tax authority, if the description provided to it is incomplete or inconsistent with reality, there is no protection anyway. And if he has a suspicion that WIS is to build a structure in order to abuse it, it would probably be better if he had not issued WIS than questioned it years later – explains Dorota Pokrop.

In her opinion, it is also difficult to understand the idea of the Ministry of Finance to limit the protection resulting from WIS to three years in time. It is completely unjustified if neither the regulations nor the subject of the transaction change. It only forces new conclusions, which is associated with the risk of obtaining a different answer, which would significantly disturb the business of such enterprises.

Consultations on changes will last until September 7, 2020. Comments and opinions on the entire project can be submitted to the following address: Sekretariat.PT@mf.gov.pl.

