

**A PRE-MATURE INVOICE SUPPORTING A PREPAYMENT IS NOT AN "EMPTY" INVOICE –
FINANCE MINISTER CHANGES HIS VIEWS**

We wish to alert you to a private tax ruling given by the Finance Minister ("FM") on 10 November 2015 (ref. IPPP1/4512-972/15-2/EK), which dealt with the treatment of an invoice supporting a prepayment that is ultimately not made within 30 days from invoice date.

According to VAT Act (Article 106i.7(2)), invoices supporting prepayments must be issued no earlier than 30 days before receipt of all or part of the payment. One practical problem that occurs here is when the customer does not make the prepayment within that time. If that is the case, then the invoice does not comply with VAT Act.

According to the discussed ruling:

- premature invoices do evidence actual taxable transactions (performance of future contracts);
- if the issuer of such an invoice does not receive the prepayment for reasons which are beyond his control, the invoice cannot be treated as what is called an "empty" invoice, i.e. one that does not support an actual transaction (see Article 108 VAT Act);
- the tax will not become chargeable until on actual receipt of the prepayment;
- the issuer is not required to adjust/correct its prepayment invoice even though it was issued more than 30 days before receipt of the payment.

This ruling is a turnaround in Finance Minister's views on the matter. In his earlier rulings, FM claimed that an invoice issued more than 30 days before receipt of prepayment is incorrect and as such must be corrected and a correct one must be issued (see our newsletter no. 19/2015).

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

Delta Building, 4th floor
ul. Towarowa 35
61-896 Poznań
tel. (+48) 61 643 45 50
fax. (+48) 61 643 45 51

Warsaw Office

CENTRAL Tower, 22nd floor
Al. Jerozolimskie 81
02-001 Warszawa

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