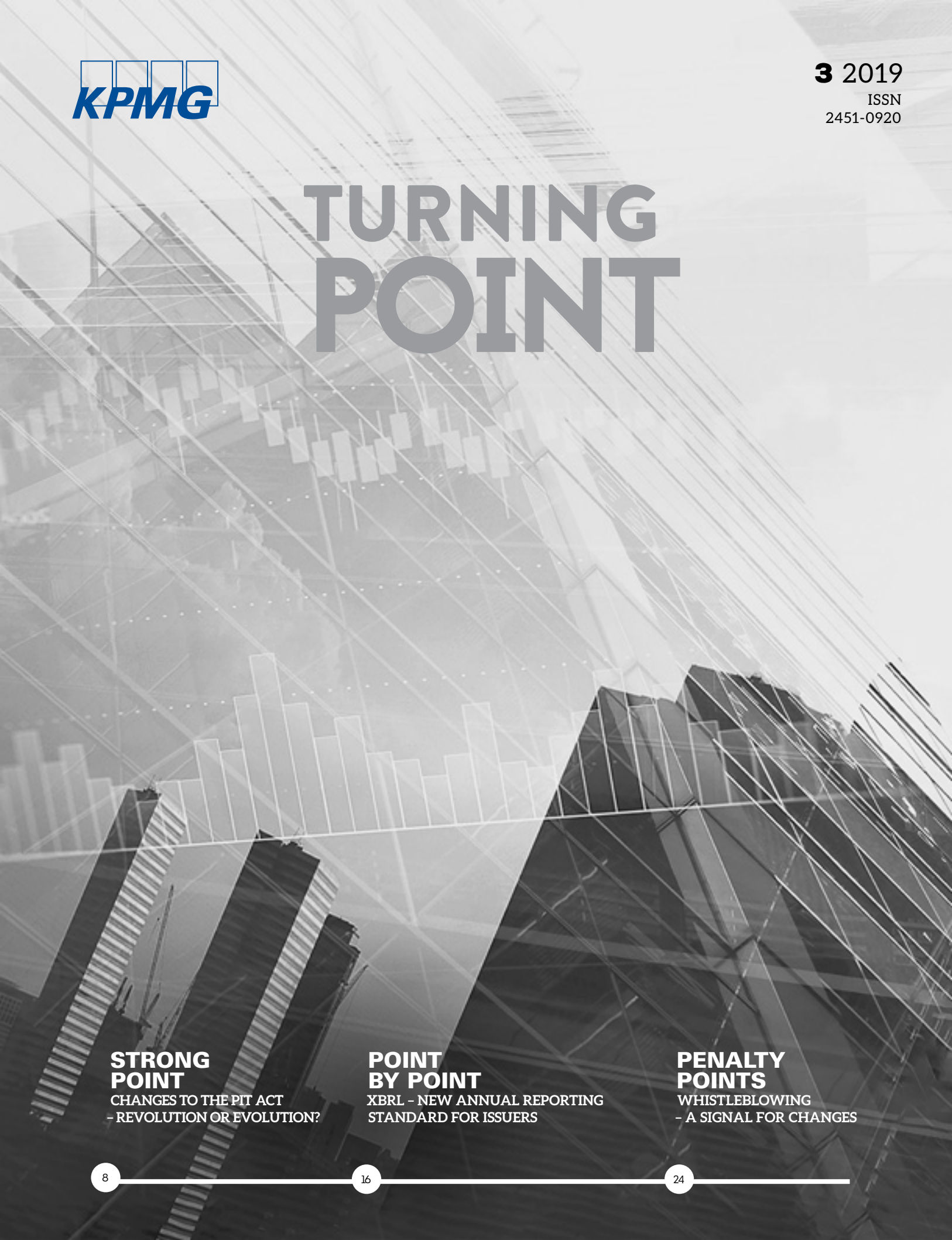
3 2019
ISSN
2451-0920

TURNING POINT



STRONG POINT
CHANGES TO THE PIT ACT – REVOLUTION OR EVOLUTION?

8

POINT BY POINT
XBRL – NEW ANNUAL REPORTING STANDARD FOR ISSUERS

16

PENALTY POINTS
WHISTLEBLOWING – A SIGNAL FOR CHANGES

24

№ 3 2019

TURNING POINT

IN THIS ISSUE

kpmg.com/pl/en

home.kpmg.com/pl/TurningPoint

EXPERTS
FEATURED IN THIS ISSUE

Andrzej Marczak

Partner, Head of the PIT Team
at KPMG in Poland, Head of Tax Advisory
at KPMG in Central and Eastern Europe
amarczak@kpmg.pl

Grzegorz Grochowina

Senior Manager in the PIT Team
at KPMG in Poland
ggrochowina@kpmg.pl

Renata Kulpa

Attorney-at-Law at
D. Dobkowski sp. k. – Law Firm
associated with KPMG in Poland
rkulpa@kpmg.pl

Anna Białecka

Trainee Attorney-at-Law, Junior Lawyer
at D. Dobkowski sp. k. – Law Firm
associated with KPMG in Poland
abialecka@kpmg.pl

Monika Warmbier

Partner and Head of the Accounting
Advisory Team for non-financial sector
enterprises at KPMG in Poland
mwarmbier@kpmg.pl

Marek Żyliński

Senior Manager in the Accounting Advisory
Team for non-financial sector enterprises
at KPMG in Poland
mzylinski@kpmg.pl

Piotr Pawlak

Expert in the accounting advisory team
for non-financial sector enterprises
at KPMG in Poland
ppawlak@kpmg.pl

EXPERTS
FEATURED IN THIS ISSUE

Michał Mrozik

Senior Manager,
International Tax Team
at KPMG in Poland
mmrozik@kpmg.pl

Natalia Stępień

Expert, International Tax Team
at KPMG in Poland
nstepien@kpmg.pl

dr Fatima Mohmand

Advocate, Of Counsel
at the D. Dobkowski sp. k.
Law Firm Associated with KPMG
fmohmand@kpmg.pl

Aleksandra Janiszewska

Barrister Trainee, Junior Lawyer
at the D. Dobkowski sp. k. Law Firm
Associated with KPMG
ajaniszewska2@kpmg.pl

Natalia Kłoś

Tax Expert
in the VAT Team
at KPMG in Poland
nklos@kpmg.pl

Marta Janaszek

Tax Expert in the VAT Team
at KPMG in Poland
mjanaszek@kpmg.pl

Marek Król

Attorney-at-Law at D. Dobkowski sp. k.
Law Firm associated
with KPMG in Poland
marekkrol@kpmg.pl

ANDRZEJ MARCZAK
Partner, Head of the PIT Team at KPMG in Poland, Head of Tax Advisory at KPMG in Central and Eastern Europe
amarczak@kpmg.pl

He has over 25 years of experience in tax advisory, mainly in the field of personal income taxation, international management taxation, current tax settlements and planning tax structures. He has experience in advising employers related to employment of employees, social security, labor law and international taxes. He represents clients before tax authorities and administrative courts. He performs as a speaker at numerous tax seminars both in Poland and abroad, and as a commentator on tax events for the national press, radio and television. He is the author of many tax publications. Every year in the years 2013-2018, he was elected the best specialist in the field of personal income tax according to the Polish Ranking of Tax Consultancy Companies prepared by the Rzeczpospolita daily broadsheet. He is a member of the Supervisory Board of the International Fiscal Association and the vice-chairman of the National Council of Tax Advisors, he holds the title of tax advisor.

CHANGES TO THE PIT ACT – REVOLUTION OR EVOLUTION?

The last period brought significant changes in the scope of personal income tax from both the employee and the employer side. Many of them have already entered into force and the remainder part is at the final legislative stage. We are talking to Andrzej Marczak and Grzegorz Grochowina from the PIT Team at KPMG in Poland about what is worth knowing about them.

Turning Point (TP):
Which significant changes for taxpayers have been made recently in the scope of the PIT Act?

ANDRZEJ MARCZAK (AM):
Undoubtedly, you should start with the one introduced on August 1 this year a new discount for people up to 26 years old, i.e. zero PIT. Thanks to the amendment to the provisions of the PIT Act, the income of persons under the age of 26 and achieving income from work (i.e. from an employment relationship, cooperative employment relationship, service relationship or outwork relationship) and from work contracts concluded with the company to in the amount of PLN 85,528 annually. Due to the fact that the regulations entered into force on August 1 this year, the limit of exemption for 2019 was limited to the months in which the new provisions are in force, and amounts to PLN 35,636.67.

TP > Is this the right solution?
AM> Given that the labor market in Poland is currently an "employee market", any incentive to keep highly qualified employees in our country deserves approval. In recent years, there has already been quite a large outflow of highly specialized employees abroad – whether for demographic reasons or because of the lowered retirement age. One should hope that the introduced "relief for young people" will also have a positive impact on the situation on the labor market in Poland.

GRZEGORZ GROCHOWINA (GG):
However, the decision to limit the use of the discount to only people working full-time and some civil law contracts is interesting. Further exceptions in tax regulations complicate the settlement system considerably, and it seems that the differences in budget profits would not be so significant if all persons under 26 years of age taxed could benefit from the exemption according to a progressive tax scale, regardless of what legal title they earn revenues.

Given that the labor market in Poland is currently an "employee market", any incentive to keep highly qualified employees in our country deserves approval. In recent years, there has already been quite a large outflow of highly specialized employees abroad – whether for demographic reasons or because of the lowered retirement age. One should hope that the introduced "relief for young people" will also have a positive impact on the situation on the labor market in Poland.

GRZEGORZ GROCHOWINA
Senior Manager in the PIT Team at KPMG in Poland
ggrochowina@kpmg.pl

He specializes in advising in the field of personal income tax and ZUS, including advising on international aspects of natural taxation. He also coordinates the process of preparing annual tax returns. He is a frequent author of comments published in the tax press and a commentator on tax events on the radio and television. He has been working at KPMG since 2006. He is a graduate of the Cracow University of Economics.

TP › How many people will benefit from the introduced "relief for young people"?

GG › As announced by the Ministry of Finance, over 2 million young employees will benefit from the relief. How much exactly will the taxpayer gain from the changes depends on the amount of remuneration he receives. Assuming that someone receives a monthly salary at the level of the annual limit of PLN 85,528 (i.e. approx. PLN 7,127 gross), that person's annual profit will be almost PLN 7,000.

AM › AM ›However, it should not be forgotten that the exemption in question will not simultaneously exempt from paying compulsory social and health insurance contributions from these revenues. Thus, notwithstanding the tax exemption, part of the revenues pursuant to art. 21 paragraph 1 point 148 of the PIT Act, these revenues will constitute the basis for calculating social security and health insurance contributions to the extent in which they were provided until the relief was introduced.

TP › A burning issue is also the introduction of lower PIT rates...

AM › In relation to the recently applicable provisions of the Act on personal income tax, from October 1 this year the lowest tax rate resulting from the tax scale was reduced from 18% to 17%, while leaving the 32% rate for income above PLN 85,528. The rate reduction applies to taxpayers who earn taxable income on general terms using a tax scale (including pensioners, as well as entrepreneurs who did not take a flat tax or a lump-sum tax on income from non-agricultural business activities).

GG › This reform is another step towards reducing the tax wedge, which is the difference between what the employee gets "on hand" and the amount that the employer must spend on his employment. The tax wedge for the poorest (earning within the minimum wage) in Poland is one of the highest among OECD countries, while the progressiveness of the tax wedge is one of the lowest

TP › Can we really call these changes revolutionary?

AM › PIT tax rates verification was expected. Nevertheless, in my opinion, it is worth to have a more systematic approach to taxation of personal income and consider building a completely new tax scale that will reflect the real needs of the state budget and be attractive to taxpayers. We had two tax rates, and now the tax scale consists of almost four quite accidental rates. We have zero PIT for people up to 26 years of age, 17%, 32% and 36% will apply to groups of people earning over PLN 1 million a year (4% solidarity levy).

TP › What about tax deductible costs?

GG › In this case, the legislator assumes a reduction in labor costs by at least raising the amount of employees' tax deductible costs by at least two times. It should be noted that the amount of tax deductible costs has generally not been indexed for over a decade. What in the conditions of inflation, which for the last 10 years amounted to about 20%, and with an almost two-fold increase in the minimum wage in the same period, in practice means that freezing the amount of tax deductible costs constituted a real tax increase for employees.

Costs before 01.10.2019 (in PLN) unchanged since 2008	**Costs after change since 01.10.2019 (in PLN)**
Annual (full-timers) 1,335.00	annual (full-timers) **3000**
annual (full-timers, commuters) 1,668.72	annual (full-timers, commuters) **3600**
annual (multi full-timers) 2002.05	annual (multi full-timers) **4500**
annual (multi full-timers, commuters) 2,502.56	annual (multi full-timers, commuters) **5400**

This reform is another step towards reducing the tax wedge, which is the difference between what the employee gets "on hand" and the amount that the employer must spend on his employment. The tax wedge for the poorest (earning within the minimum wage) in Poland is one of the highest among OECD countries, while the progressiveness of the tax wedge is one of the lowest.

TP › Who and how much will benefit from lower PIT and higher tax deductible costs?

GG › Taking into consideration the introduced changes, the taxpayer's annual profit, which earns PLN 2,250 gross (minimum remuneration for work in 2019), will be about PLN 500. However, with gross earnings of PLN 4,765 (the average monthly salary in the national economy forecast for 2019) it will be over PLN 700 annually. According to the Ministry of Finance, over 25 million Poles will benefit from the new solutions.

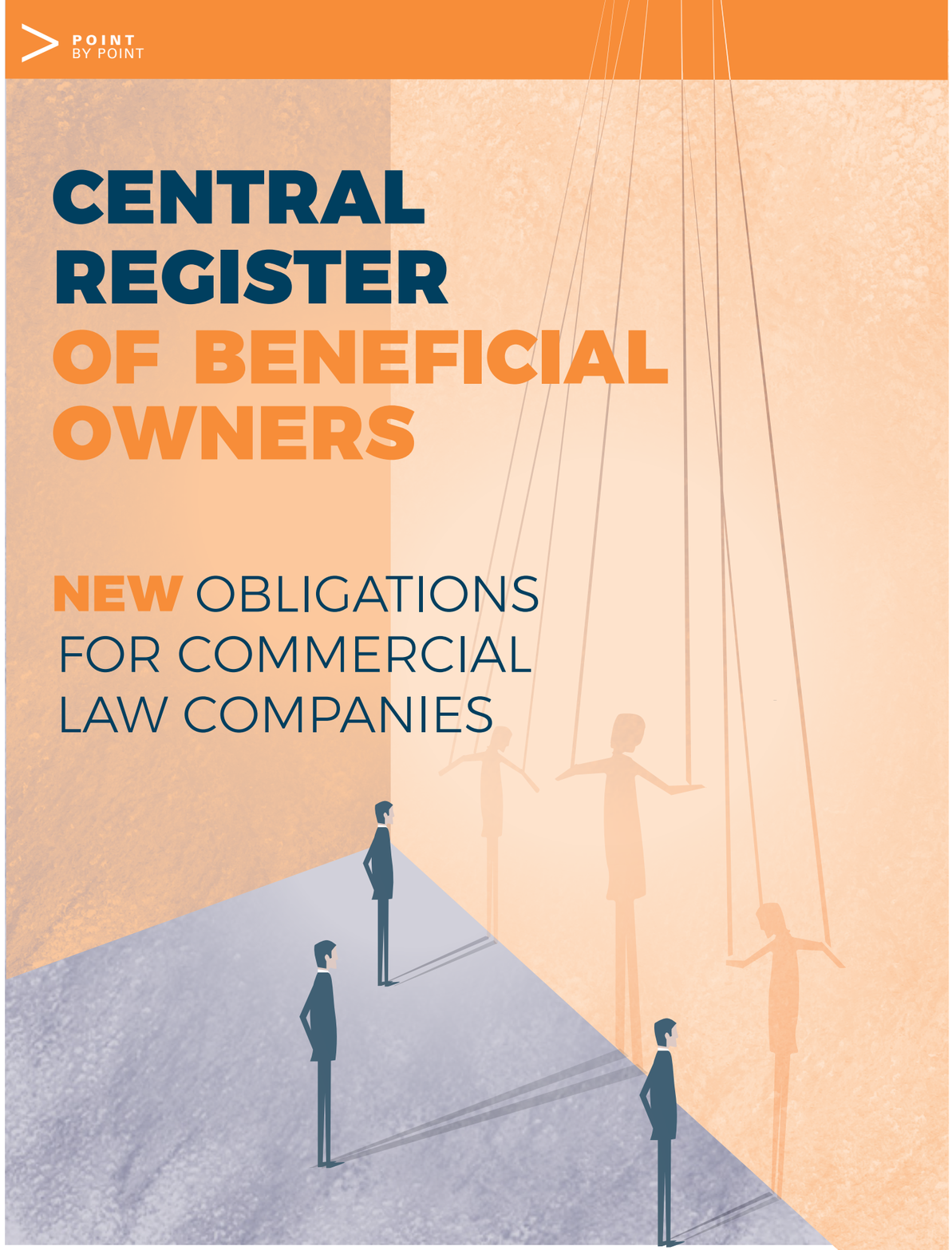
TP › What changes in the PIT Act should taxpayers pay attention to?

AM › One should also not forget about the so-called a solidarity levy of 4% on the excess of the sum of income over PLN 1 million obtained in a tax year to which the taxation rules set out in art. 27, art. 30b, art. 30c and art. 30f of the PIT Act, reduced, among others by the amount of social security contributions. Income referred to above includes those taxed according to a progressive tax scale, e.g. from an employment relationship, civil law contracts, economic activity (also that taxed by a 19% flat tax) and income from capital gains (e.g. sale of securities or shares). The sum of income to which the new levy will apply does not include income taxed with a flat-rate tax (including income from interest and dividends). Under the new regulations, the taxpayer will be required to pay solidarity levy for the first time by 30 April 2020.

PZ › Thank you for the interview. ■

CENTRAL REGISTER OF BENEFICIAL OWNERS

NEW OBLIGATIONS FOR COMMERCIAL LAW COMPANIES



From October 13 this year the provisions regarding the Central Register of Beneficial Owners, introduced by the Act on Counteracting Money-Laundering and Terrorist Financing of March 1, 2018 (hereinafter referred to as the "Act") apply.

The new regulations provide for the creation of the Central Register of Beneficial Owners (hereinafter: "CRBO"), i.e. an ICT system for processing information about beneficial owners of business entities. The CRBO is a public register accessible free of charge. Introduction of a new register and a number of other solutions under the Act, is aimed at strengthening and tightening the existing provisions in the field of counteracting money-laundering and terrorism financing, as well as facilitating a more effective performance of duties in this area by obligated institutions.

The Act is based on a presumption of authenticity of data recorded in the register and responsibility for reporting false data/information to the CRBO. From the entrepreneurs' perspective, creation of the CRBO means new obligations and the possibility of being imposed a fine in the event of failure to perform their obligations under the Act..

The Act is based on a presumption of authenticity of data recorded in the register and responsibility for reporting false data/information to the CRBO. From the entrepreneurs' perspective, creation of the CRBO means new obligations and the possibility of being imposed a fine in the event of failure to perform their obligations under the Act.

Who is a beneficial owner and who is required to report information to the CRBO?

The definition of the beneficial owner has been extended in relation to the one included in the hitherto binding Act on Counteracting Money-Laundering and Terrorist Financing. Pursuant to the new wording of the Act, the beneficial owner should be understood as a natural person or natural persons exercising direct or indirect control over the client through their rights, which arise from legal or actual circumstances, and permit to exert a decisive influence on the actions taken by a client or a natural person or persons on whose behalf business relationships are established or a one-off transaction is carried out. A beneficial owner of a client that is a legal person other than a company, whose securities are admitted to a regulated market and are subject to the disclosure obligation, is a natural person that:

- is a shareholder of the client that holds more than 25% of the total number of shares of that legal person,
- has more than 25% of the total number of votes in the client's governing body, also as a pledgee or a usufructuary,, or on the basis of agreements with other persons entitled to exercise the right of vote,
- exercises control over a legal person or legal persons who jointly have the ownership right to more than 25% of the total number of shares of the client, or jointly hold more than 25% of the total number of votes in the client's body, also as pledgee or a usufructuary, or pursuant to agreements with others having the right of vote,
- exercise control over the client by having, in relation to that legal person, the rights of a controlling entity (in accordance with the Accounting Act).

However, in a situation where the beneficial owner cannot be determined on the basis of the above criteria (in the case of documented inability to determine or doubt as to the identity of the natural persons mentioned above), the Act provides that the beneficial owner should be considered a natural person holding a senior management position. Different rules apply where the client of the obligated institution is a trust. In such a situation, the Act recognizes

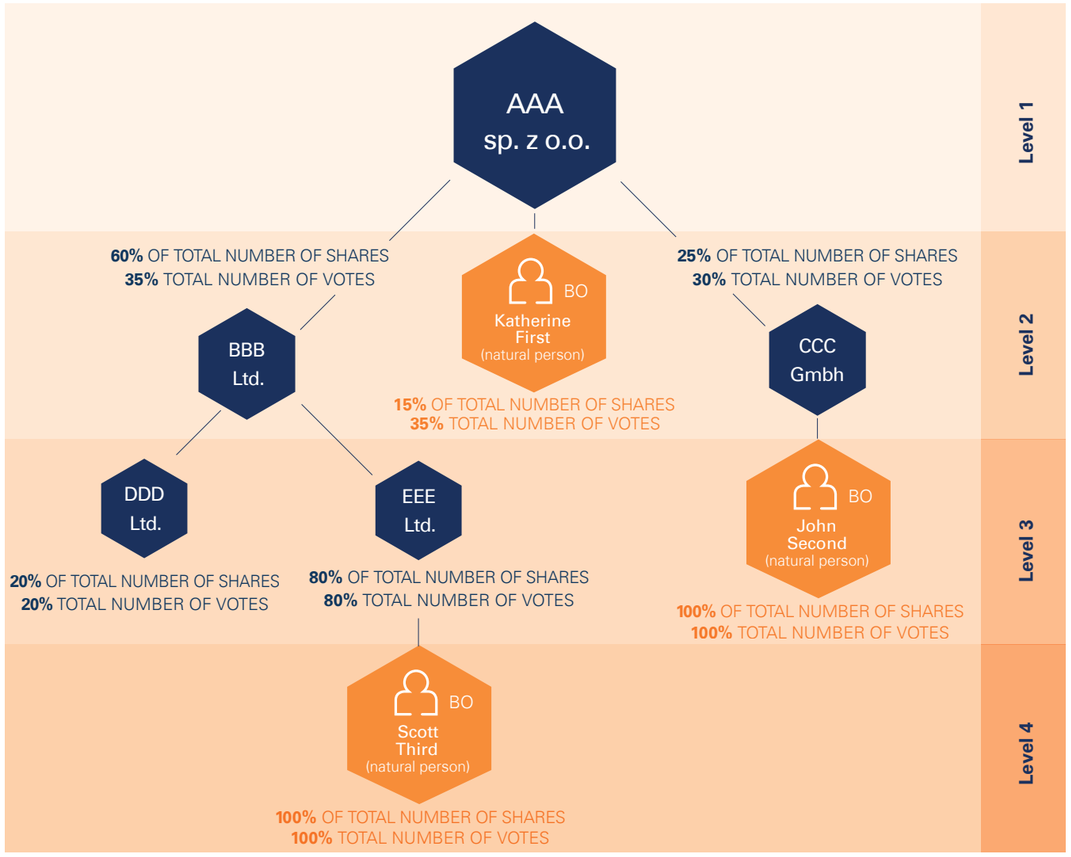
the beneficial owner as a founder, trustee, supervisor, beneficiary and another person exercising control over the trust. However, if the client is a natural person conducting business activity, with reference to which no premises or circumstances have been found that could indicate that another natural person or natural persons have control over such a person, it is assumed that such a client is also a beneficial owner. Under the provisions currently in force, the obligated institutions were only to act with due diligence to identify the beneficial owner. The new provisions of the Act provide for the obligation to determine, i.e. identify the beneficial owner, verify its identity. Obliged to submit information about the real beneficiary to CRBO are:

- general partnerships,
- limited partnerships,
- limited joint-stock partnerships,
- limited liability companies,
- simple joint-stock companies,
- joint-stock companies, with the exception of public companies within the meaning of the Act of 29 July 2005 on Public Offerings and Conditions Governing the Introduction of Financial Instruments to Organized Trading, and on Public Companies (which companies are required to provide on their websites information about shareholders holding more than 5% of votes from shares).

An authority competent for the CRBO is the Minister of Finance. Notifications to the CRBO should be made by a person authorized to represent a company. The data is transferred to the CRBO in the form of an electronic document, in accordance with the template provided by the minister competent for public finance. Notifications to the

Figure No. **1**

ow to identify a beneficial owner (BO) at particular levels?*



* BENEFICIAL OWNER

An authority competent for the CRBO is the Minister of Finance. Notifications to the CRBO should be made by a person authorized to represent a company. The data is transferred to the CRBO in the form of an electronic document, in accordance with the template provided by the minister competent for public finance. Notifications to the CRBO may be made only by holders of an electronic signature or a signature confirmed by the ePUAP profile.

CRBO may be made only by holders of an electronic signature or a signature confirmed by the ePUAP profile.
Both submitting and obtaining information to and from the Central Register of Beneficial Owners is free of charge. Along with the notification, the person making it is required to submit a statement on the accuracy of the information reported to CRBO under pain of criminal liability for submitting a false statement. A person submitting information about beneficial owners and relevant updates pursuant to the provisions of the Act, is liable for damage caused by reporting false data to the CRBO, and for failure to report data and changes to data covered by the entry to the CRBO within the statutory deadline (unless the damage resulted from force majeure or exclusively due to a fault of the injured party or a third party, for whom the person submitting information and respective updates on beneficial owners is not responsible for). Under the Act, companies required to submit a notification to the CRBO, which have not complied with the obligation to submit information on time, are subject to a financial penalty of up to PLN 1 million.

What data and information are subject to notification?

Pursuant to the provisions of the Act, the information provided to the CRBO is divided into two categories. in the first category fall the information that permit identification of the company that submits the notification, i.e. name (business name), organizational form, registered office, number in the National Court Register, tax identification number. The second category is data identifying a beneficial owner and a member of a body or a partner authorized to represent the company making the notification. This category includes the following information: name and surname, citizenship, country of residence, personal identification (PESEL) number or date of birth – applicable with reference to persons that do not hold the PESEL number – as well as information on the volume and nature of the shareholding or rights of the beneficial owner.

What is the deadline for reporting data to the CRBO?

The deadline for reporting information on the beneficial owner to the CRBO is 7 days. In the case of new companies entered in the National Court Register after October 13, 2019, notification to the CRBO must be made within 7 days of entering in the National Court Register (and not the delivery by the registry court of a copy of the decision on entering the company or changing data in the National Court Register, which will mean the need to monitor entries in the National Court Register). For companies existing before the date of entry into force of the provisions of the Act, this deadline was postponed until April 13, 2020. With respect to updating the data contained in the CRBO, the provisions of the Act also provide for a 7-day period, but from the date of change. It should be remembered that the above time limit also applies in situations when there are changes in the capital or ownership structure at higher levels of capital relations, which may result in a change of a beneficial owner. ■

RENATA KULPA

Attorney-at-Law at
D. Dobkowski sp. k.
– Law Firm associated
with KPMG in Poland
rkulpa@kpmg.pl

She specializes in banking and financial law for financial and credit institutions in all matters related to their operational activities and representation before financial supervision authorities. She advises companies on company law, business law and labor law. She has been working at D. Dobkowski limited partnership associated with KPMG for over 20 years. Renata graduated from the Faculty of Law and Administration at the University of Warsaw and completed post graduated studies on European law at the Faculty of Law and Administration at Lazarski University.

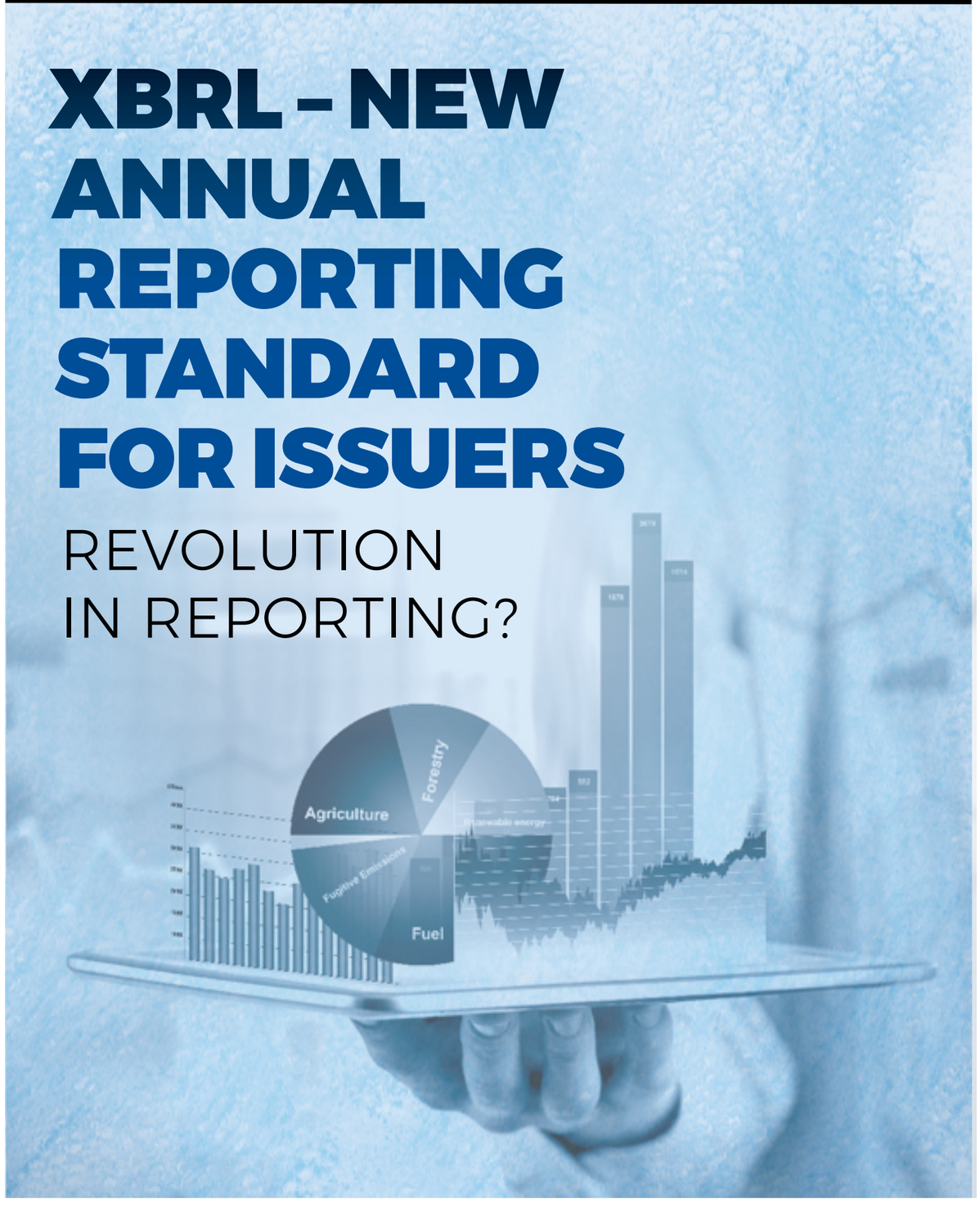
ANNA BIAŁECKA

Trainee Attorney-at-Law,
Junior Lawyer at D.
Dobkowski sp. k.
– Law Firm associated
with KPMG in Poland
abialecka@kpmg.pl

She specializes in commercial law, advising Polish and international entities. She also advises companies on labor law. She has been associated with the law office D. Dobkowski limited partnership associated with KPMG in Poland since 2013. Anna graduated from the Faculty of Law and Administration at Kardynał Stefan Wyszyński University in Warsaw. She is undergoing legal apprenticeship at the Warsaw Bar Association of Attorneys-at-Law.

XBRL – NEW ANNUAL REPORTING STANDARD FOR ISSUERS

REVOLUTION IN REPORTING?



Annual reports of securities' issuers are to undergo significant changes in the nearest future, making them more accessible and useful to market participants. The XBRL standard, according to the European Securities and Markets Authority ("ESMA"), will make it easier for investors to access and analyze data. However, it is nothing new in the world, it is widely used in business. So when will knowledge of XBRL become a basic requirement in the European Union for every specialist responsible for a reporting process?

Changes in the law, or what awaits us

From 1 January 2020, entities that are issuers of securities admitted to trading on a regulated market within the European Union will be required to prepare annual reports in a uniform European reporting format ("ESEF"). The need to introduce new reporting requirements results from Directive 2004/109/EC, which obliged ESMA to develop draft regulatory standards specifying the electronic reporting format. Such a project was prepared and then adopted by a regulation of the European Commission. On May 29, 2019, in the Official Journal of the European Union, Commission Regulation (EU) 2018/815 of December 17, 2018 ("Regulation") supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards regarding the specification of the uniform electronic reporting format. The technical standards adopted by the European Commission regulation are an act delegated by the directive, so after adoption they are directly applicable in all European Union countries. The Regulation applies to annual reports containing financial statements prepared for the reporting period beginning on or after 1 January 2020. Thus, issuers have little time to prepare for new reporting requirements. The introduced changes are aimed at increasing the comparability of reports, facilitating analyzes and the possibility of creating databases with financial data of issuers collected in a standardized format.

The assumption of the new requirements is that:

- issuers' annual reports were prepared in the XHTML format,
- consolidated financial statements prepared in accordance with the International Financial Reporting Standards (IFRS), which are part of the consolidated annual report of issuers, were marked using the XBRL markup language,
- XBRL tags were placed in the unified XHTML document using the Inline XBRL (iXBRL) standard specification.

Issuers who do not prepare consolidated financial statements would only have to prepare annual reports in XHTML format, but without having to mark them using XBRL tags. The new requirements will be introduced gradually. It is worth emphasizing, however, that the financial statements prepared in ESEF will be subject to audit by a certified auditor. For annual financial statements prepared for periods beginning on 1 January 2020 and later the basic elements of the consolidated financial statements prepared in accordance with IFRS will be marked in detail using the XBRL markup language. In practice, this means the need to assign a tag to each number presented in the statement of financial position, profit or loss and total income (or from profit or loss and separately in the statement of total income), cash flow and changes in equity. In addition, for financial statements for periods beginning on or after 1 January 2022, additional information to the financial statements will also be marked in XBRL. At the moment, additional information and explanations will be marked as collective

From 1 January 2020, entities that are issuers of securities admitted to trading on a regulated market within the European Union will be required to prepare annual reports in a uniform European reporting format ("ESEF").

elements (so-called block marking), e.g. as the entire paragraph, without the need to mark specific numbers in the text descriptions in detail. It is worth noting here that the requirement for detailed marking of data in the explanatory notes was considered during the creation of the Regulation and ultimately its implementation has been postponed for the time being due to the potentially too high burden on issuers. However, it cannot be ruled out that the need for detailed labeling of the amounts contained in the explanatory notes may appear in the future as the next stage in the implementation of XBRL reporting. In some countries, specific marking for additional information is already mandatory, such as in the USA.

GLOSSARY OF TECHNICAL STANDARDS

Although the described technical standards are widely used all over the world, it does not mean that every person working in financial reporting has had experience in working with them.

1~ XHTML FORMAT

The standardized XHTML (eXtensible Hyper-Text Markup Language) format proposed by ESMA is not proprietary and therefore may be used freely. Reading files in XHTML does not require specialized software – just a standard web browser.

2~ STANDARD XBRL

The XBRL (eXtensible Business Reporting Language) standard is a kind of financial reporting language designed to exchange financial information. Its basic feature is the unambiguous identification of data in the financial statement by linking each element and each number to a previously published and harmonized dictionary, called XBRL taxonomy, and assigning them attributes such as currency, level of rounding used in the presentation of amounts or the period to which it relates.

3~ IXBRL SPECIFICATION

Inline XBRL (iXBRL) is a special version of the XBRL standard that combines the advantages of HTML and XBRL. The XBRL standard itself is a code that – without the right software – is not readable for a human. Readability without the need for additional software is provided by iXBRL, which uses the mechanism for embedding XBRL tags in XHTML documents in such a way as to enable their visualization. Thanks to this connection, it will be possible to read the prepared and labeled financial statements using web browsers or other dedicated applications.

The new requirements will be introduced gradually. It is worth emphasizing, however, that the financial statements prepared in ESEF will be subject to audit by a certified auditor.

IFRS taxonomy and its extensions

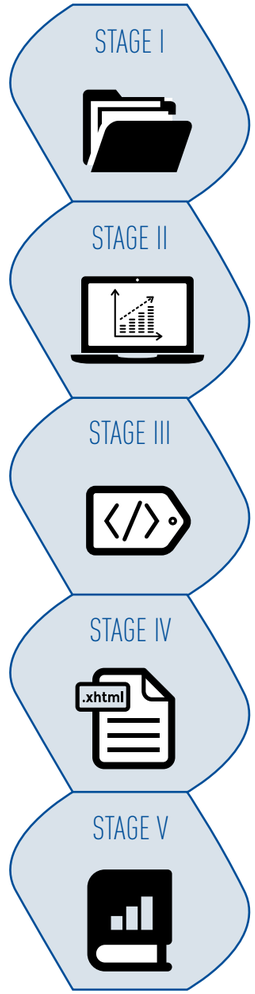
One of the main dimensions of XBRL tags is the IFRS taxonomy, which is a kind of dictionary enabling to assign the selected amount in the financial statement "significance" in the form of the value described in the accounting standards – regardless of which name the issuer uses in relation to a given item in its report. The basic taxonomy, which is to be used for the purpose of marking consolidated financial statements prepared in accordance with IFRS, is included in the Annex to the Regulation and is based on the IFRS taxonomy developed by the team operating under the Foundation of the International Accounting Standards Council. It is updated annually, along with the implemented changes to IFRS. Currently, taxonomy contains several thousand items. Each of them is described in detail, has a specific label, type and attribute, accounting nature and reference to a specific paragraph of the IFRS, where the commonly used practice, scope of disclosure or an example corresponding to a given item is described. It should be noted that XBRL allows for the creation of dictionary extensions (terms) specific to the industry or enterprise. The mechanism for creating extensions is that if there is no XBRL tag in the basic taxonomy catalog for appropriate marking of a given item in the financial statement, it should be created. At the same time, it must be indicated which of the existing positions of the basic taxonomy is the closest extension – this mechanism is commonly called "anchoring". In practice, this will enable issuers to add so-called extended taxonomy to the basic elements, in accordance with accepted principles of their marking. Due to the fact that the list of items included in the taxonomy is relatively extensive, as well as taking into account the possibility of using extensions, it is estimated that making the correct assignment of elements of the taxonomy to the items of the financial statements will require not only proficient knowledge of the taxonomy itself, but also the requirements of IFRS that the items are associated with.

Dlaczego XBRL?

The XBRL standard opens up a number of new possibilities because the information it contains is clearly defined, comparable and can be easily converted to other formats. It allows to save information so that data processing systems can search, process, group and analyze data from the report, i.e. determine the nature and classification of numerical data, in which currency they are presented, what date or period they concern etc. This feature provides the ability to automatically identify, recognize, process and store information. XBRL only changes the format, not the content of the information, making it recognizable to computer systems and databases. This allows, for example, for the analysis of large amounts of financial information without extensive and onerous manual processing, and allows users to compare numerical information contained in the financial statements of various issuers. This facilitates the process of automating data collection for analysis. In addition, it significantly limits the difficulties associated with the language in which the financial statements are prepared – XBRL tags are universal and unambiguous, although their descriptive names will vary depending on the language of the issuer's country. In addition, machine-readable XBRL information can easily be converted to other formats that will be readable by SQL or Excel editors, thus avoiding the onerous, manual re-entry of data. The IFRS taxonomy covers nearly 7,000 identifiers.

FOLLOW-UP STEPS, OR HOW TO PREPARE?

The new format of reporting for issuers of securities, in particular for consolidated financial statements prepared in accordance with IFRS, requires changes to existing reporting processes. The XBRL reporting implementation process can be presented as follows:



Identification of IFRS taxonomy elements specific to individual items of the consolidated financial statements

Creating an extended taxonomy with elements specific to a given company and linking them to IFRS taxonomy

Carrying out the process of marking the consolidated financial statements using the XBRL markup language

Preparation of the issuer's annual report in XHTML format, which includes consolidated financial statements marked in the iXBRL standard

Publication of annual report in anelectronic form

Correct labeling of reports will require not only proficient knowledge of extensive taxonomy, but also other aspects of data marking in XBRL. The knowledge and experience of experts in the field of IFRS and XBRL taxonomy will allow you to maximally save the time necessary to prepare an annual report in accordance with the new requirements and to avoid mistakes when determining the financial statements.

Since the process of determining financial statements using XBRL tags, especially for the first time, may be time consuming, it will be necessary to properly plan the deadlines for preparing financial statements and to technically prepare the organization to prepare annual reports in XHTML format (with tags in iXBRL). It is also important because, according to the position of ESMA, the report prepared in ESEF will constitute an element of statutory reporting and will be compulsorily submitted together with the annual report in the current format.

TAILORED-MADE

KPMG creates a tool tailored to local market needs, which will help standardize and automate the process of preparing annual financial statements compliant with ESEF and enable those responsible for financial reporting to prepare themselves to meet new reporting requirements. If you are interested, please contact the authors of the article.

It is worth mentioning that in 2017 ESMA organized a workshop with employees of the financial reporting departments of selected EU issuers, during which they marked their reports in the iXBRL standard in software made available for this purpose.

According to reviews collected after the workshop, data marking is assessed rather as a task of medium difficulty, but time consuming, especially at the first marking. As mentioned earlier, the technical standards prepared by ESMA have been approved by the European Commission – thus they have become the law directly applicable in Poland. For this reason, issuer reporting teams should start preparing for the implementation of ESEF. The process of marking financial statements using XBRL tags, especially for the first time, can be time consuming.

The new requirements will definitely affect the time needed to prepare reporting, which translates into the need to properly plan the process of preparing annual reports, financial statements and their audit. Preparation of an annual report in a new format certainly is not a task that can be successfully completed in a short time without prior preparation. Taxonomy is extensive – its correct application requires not only knowledge of this "dictionary", but also fluent knowledge of IFRS. The first time one prepares a report in ESEF and using XBRL, s/he may encounter difficulties of interpretation and technical nature – this is natural when new requirements apply. Not only the need to provide the right tools to create a report should be considered. It is also necessary to involve in the process people who have appropriate knowledge and skills in fluent navigating the XBRL taxonomy.

At the time of preparing the annual report and with approaching publication dates, this will save time needed for technical designation of the report itself, avoid mistakes and focus on verifying the correctness of the amounts shown in the report. ■

MONIKA WARMBIER

Partner and Head of the Accounting Advisory Team for non-financial sector enterprises at KPMG in Poland
mwarmbier@kpmg.pl

She has over 20 years of experience in auditing and advising on financial statements prepared in accordance with national and international financial reporting standards, including the implementation of IFRS. She has the rights of an auditor. She manages the accounting advisory department in Poland and the CEE region.

MAREK ŻYLIŃSKI

Senior Manager in the Accounting Advisory Team for non-financial sector enterprises at KPMG in Poland
mzylinski@kpmg.pl

He started working at KPMG in 2006 in the audit department of financial institutions, then he was working as a manager in the financial reporting department within the insurance and financial group. Currently, he works in the accounting advisory team and deals with, among others implementations of new IFRSs, accounting for non-standard transactions and restructuring within capital groups. He has the title of certified auditor, he is a member of ACCA.

PIOTR PAWLAK

Expert in the accounting advisory team for non-financial sector enterprises at KPMG in Poland
ppawlak@kpmg.pl

He has been working at KPMG for 8 years. He has experience in auditing projects, transaction advisory and in accounting and financial reporting services. In 2016, he joined the accounting advisory team, where he provides substantive support to clients in preparing e-financial statements. He is in the process of acquiring ACCA qualifications.

PAYMENTS MADE TO FOREIGN ENTITIES – DO THEY CONSTITUTE A REPORTABLE TAX ARRANGEMENT?

On 1 January 2019 the provisions introducing the reporting obligation under the Polish Mandatory Disclosure Rules (MDR) entered into force. Based on these provisions, the reporting obligation may arise also with respect to activities not aiming at obtaining any tax benefit, which meet the hallmarks envisaged in the MDR regulations.

Failure to fulfil the obligations arising from the MDR regulations in the correct manner may result in a fine imposed on individuals (e.g. management board members, CFOs or tax directors) of up to 720 daily rates (currently PLN 21.6M). Thus, correct interpretation and application of the MDR regulations is crucial in order to minimize potential risks.

Payments to non-residents – do they give rise to the reporting obligation?

One of the interpretation doubts related to the MDR regulations is the issue of summing non-resident's income (revenue), as referred to in hallmark defined in art. 86a par. 1 point 1 letter c of the Tax Ordinance. This provision states that one of the other specific hallmark is defined as a feature of an arrangement where the income (revenue) resulting / expected from the arrangement generated by the non-resident exceeds PLN 25M annually. When analyzing the abovementioned provision, there may be a doubt whether the verification of the PLN 25M threshold should take into account the entire income (revenue) paid by the Polish entity to non-residents under different legal contacts / titles. This doubt is escalated by the MDR Guidelines issued by the Ministry of Finance, in which it is indicated that "In order to verify whether the other specific hallmark should apply in a given case one has to sum-up all income (revenue) paid or expected to be generated by a given taxpayer being a non-resident in a calendar year, without regard to its sources."Thus, establishing the correct approach in this case is crucial since it may impact potential reporting obligation of the paying entity being the user. The wording of the provision in question can lead to the conclusion that only payments resulting from a single arrangement should be taken into consideration when determining the reporting obligation ("non-resident's income (revenue) (...) resulting / expected from the arrangement exceeds annually PLN 25,000,000"). Bearing this in mind, when assessing whether the aforementioned other specific hallmark is fulfilled, only non-resident's income (revenue) resulting from a single arrangement should be summed up, and thus not all of the payments made during a calendar year to a single entity.

Failure to fulfil the obligations arising from the MDR regulations in the correct manner may result in a fine imposed on individuals (e.g. management board members, CFOs or tax directors) of up to 720 daily rates (currently PLN 21.6M). Thus, correct interpretation and application of the MDR regulations is crucial in order to minimize potential risks.

Example 1.

Company X pays every month interest to Company Y, being non-resident. The interest is paid on the basis of a loan agreement concluded after 1 January 2019.
In this case, the loan agreement constitutes an arrangement, which is why all the interest payments made during a calendar year to Company Y should be taken into consideration. If the sum of interest paid to Company Y exceeds the threshold of PLN 25M, one of the other specific hallmarks will be fulfilled. In such case, Company X may be obliged to submit the information on this tax arrangement (the loan agreement in question) to the Head of the National Revenue Administration. Obligation to submit the information on this tax arrangement will not materialize at the moment when the threshold of PLN 25M is exceeded, but already at the moment when Company X expects the aforementioned threshold to be exceeded.

Example 2.

In this example, apart from making the interest payments as described in Example 1, Company X will pay dividend to Company Y based on a resolution on dividend payment adopted in June 2019.

This situation differs from the previous example since in this case there are two arrangements – a loan agreement, constituting the basis for interest payments, as well as dividend resolution, resulting in dividend payment. For this reason, the assessment whether the abovementioned threshold has been exceeded should be made separately for each arrangement. If the threshold of PLN 25M has been exceeded with respect to the interest payments, Company X will potentially be obliged to report this arrangement. However, if the abovementioned threshold has been exceeded with respect to the dividend payment as well, the arrangement consisting in dividend payment will give rise to a separate reporting obligation (compared to the arrangement regarding the loan agreement). On the other hand, in a case where neither the total amount of interest, nor the total amount of dividend, exceed PLN 25M in a calendar year, none of these arrangements should give rise to the reporting obligation, even if the sum of interest and dividendpaid to Company Y by Company X exceeds in a calendar year PLN 25 million. This is due to the fact that these payments result from two different arrangements.
It should be noted that the totaling shall only be carried out with respect to the income (revenue) of a non-resident for which a limited tax obligation arises in Poland, hence the Ministry of Finance in the MDR Guidelines indicated that transactions in goods shall not be taken into account.

Summary

In September the deadline for users (generally the taxpayers) to provide information on tax arrangements, for which the first step in implementation had taken place after 25 June 2018 (for cross-border tax arrangements) or after 1 November 2018 (for tax arrangements other than cross-border tax arrangements), elapsed. Bearing in mind the possibility of imposing high penalties for non-fulfilment of the obligations arising from the MDR in the correct manner, it is recommended to take a closer look at the transactions which have been implemented / / initiated in 2018 in order to determine whether any of them might have given rise to the reporting obligation. ■

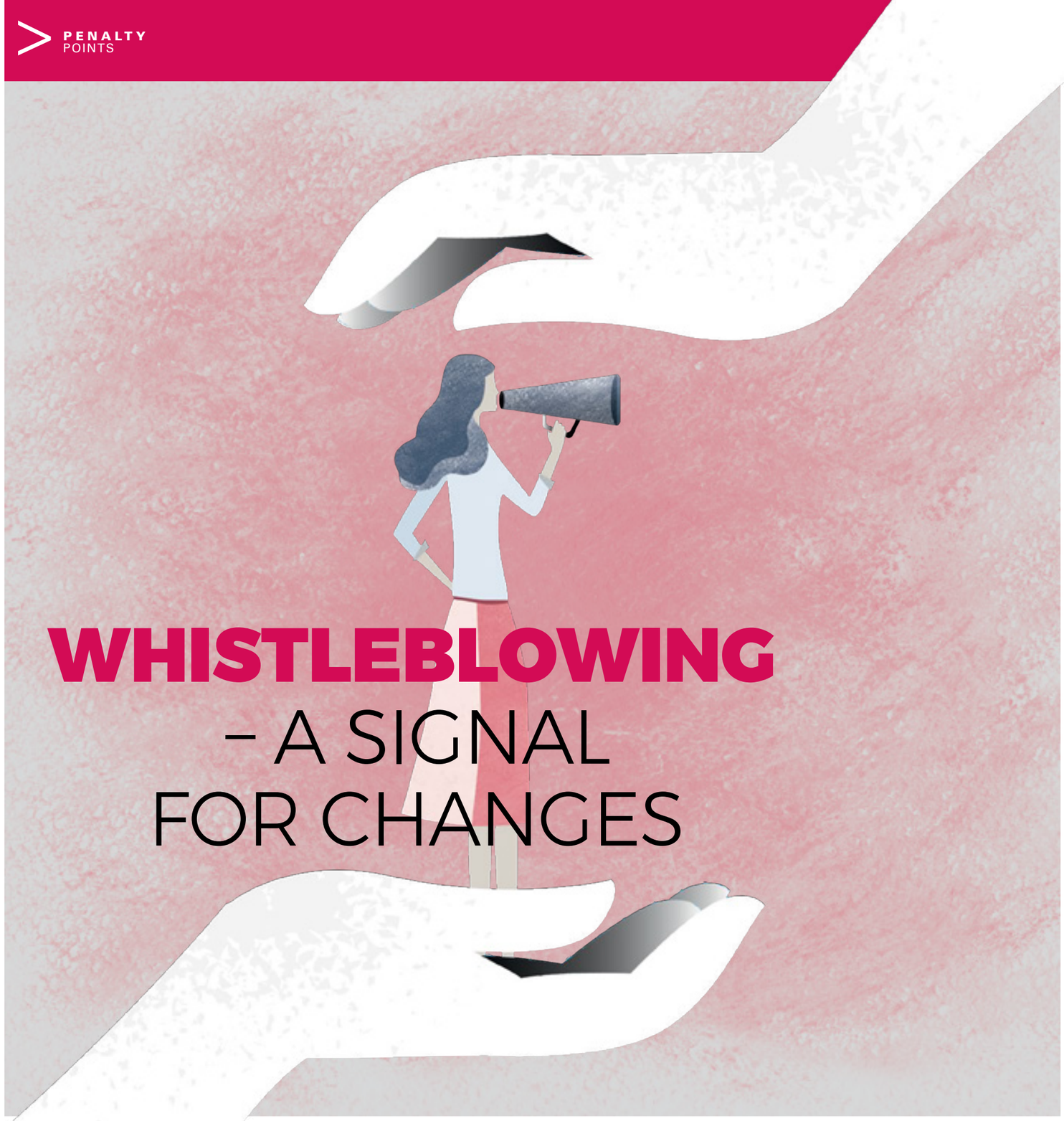
In September the deadline for users (generally the taxpayers) to provide information on tax arrangements, for which the first step in implementation had taken place after 25 June 2018 (for cross-border tax arrangements) or after 1 November 2018 (for tax arrangements other than cross-border tax arrangements), elapsed. Bearing in mind the possibility of imposing high penalties for non-fulfilment of the obligations arising from the MDR in the correct manner, it is recommended to take a closer look at the transactions which have been implemented / / initiated in 2018 in order to determine whether any of them might have given rise to the reporting obligation.

MICHAŁ MROZIK
Senior Manager,
International Tax Team at
KPMG in Poland
mmrozik@kpmg.pl

He has over 8 years of experience in tax and legal advisory, with particular emphasis on income taxes and international taxes, gained in Poland and in the UK. His experience also includes planning and implementation of comprehensive restructuring processes for entities from various industries. He is a member of a team of advisors specializing in advising on Mandatory Disclosure Rules (MDR). He is attorney-at-law and tax advisor.

NATALIA STĘPIEŃ
Expert, International Tax
Team at KPMG in Poland
nstepien@kpmg.pl

She has three years of experience in the field of tax advisory. In KPMG since 2018, she gained her previous experience in law firms focused on providing tax advisory services. She advises on income tax and international taxes. Recently, she has been involved in many projects regarding Mandatory Disclosure Rules (MDR).



WHISTLEBLOWING – A SIGNAL FOR CHANGES

PENALTY
POINTS

On 7 October 2019 the Directive on the protection of persons reporting on breaches of Union law (so-called whistleblowers; hereinafter the "Directive")[1] was officially adopted by the Council of the European Union and is now awaiting publication. Member States will have time until 15 May 2021 to introduce the relevant laws, regulations and administrative provisions into their own legal systems. However, companies should not delay the introduction of new solutions.

»

Information disclosed by the European Parliament show that only 10 Member States provide comprehensive protection for whistleblowers in their legal order. Other countries, including Poland, introduce regulations related to whistleblowing only to a limited extent[2]. However, recent scandals that have touched public opinion (including the famous Panama Papers) have made policy-makers aware that normalizing the status of whistleblowers is in the public interest. In response to a new reality, the European Commission has developed a draft Directive that provides comprehensive solutions for reporting violations and protecting whistleblowers.

Who will be covered by the Directive?

The obligations set out in the Directive will rest on legal entities operating in both private and public sectors. Legal entities in the private sector subject to the above obligations include:

1) entities employing at least 50 employees,

2) entities with an annual turnover or an annual balance sheet total of at least EUR 10 million and

3) entities operating in the field of financial services or exposed to the risk of money laundering or terrorist financing, regardless of their size.

Member States, after making an appropriate risk assessment, will be able to exempt small private entities (other than those indicated in point 3 above) from their obligations. Public entities that fall within the subjective scope of the Directive are: state administration, regional administration, municipalities over 10 thousand residents and other entities subject to public law.

What is the subject matter of the Directive?

The Directive provides for the protection of whistleblowers who report violations in the application of EU legal acts detailed in the Annexes. These acts relate to, inter alia, the following areas:

- public procurement,
- financial services, prevention of money laundering and terrorist financing,
- product safety,
- transport safety,
- food and feed safety as well as animal health and welfare,
- environmental protection,
- public health,
- consumer protection,
- protection of privacy and personal data,
- competition protection,
- fraud to the Union detriment.

»

1 European Parliament's and Council's proposal for a Directive awaiting publication is available at: https://eur-lex.europa.eu

2 Among the legal acts providing for such an obligation, first of all, it is necessary to mention the Act of 1 March 2018 on counteracting money laundering and financing of terrorism, as well as the Act of July 29, 2005 on trading in financial instruments or the Act of May 27, 2004 on investment funds and management of alternative investment funds.

A whistleblower is a person who has disclosed information publicly. However, the term is also more and more commonly used to describe those who report noticed irregularities and internal abuse within the organization in which they work.

Who is a whistleblower?
A whistleblower is a person who has disclosed information publicly. However, the term is also more and more commonly used to describe those who report noticed irregularities and internal abuse within the organization in which they work. The directive, however, departs from strictly identifying the notion of a whistleblower only with an employee and covers the protection of all natural and legal persons reporting violations, working in the private or public sector, who have obtained information on infringements in a work-related context, i.e. at least against: an employee, self-employed, shareholders, members of the management, trainees and volunteers and other persons working under the supervision and management of contractors, subcontractors and suppliers. It should be noted that under the Directive, a whistleblower who makes an external report (i.e. outside the legal entity in which he works) will have to first report the violation internally to gain protection. Only the inactivity of the subject (i.e. not taking appropriate action within a reasonable time), as well as the failure of an internal channel and procedures will allow the whistleblower to take further steps.

What obligations does the Directive impose?
The directive establishes the obligation to introduce:

- internal channels for violence reporting
- internal procedures for accepting the report and follow-up actions connected with the reports.

The channels accepting the reports should be designed to ensure confidentiality of the reporting persons' identity and prevent access to unauthorized persons. Reporting violations must be enabled by all of the following methods: in writing in electronic or paper form, orally via telephone lines, and in person by meeting the person designated to receive reports. As a consequence, entities will also be required to designate a person or a department responsible for receiving applications and for taking follow-up actions in relation to them. In addition, the Directive provides for the possibility of designating trusted persons who will provide confidential advice to employees and other persons. Legal entities were also imposed with certain information obligations. The procedures and conditions under which reports may be made must be easily accessible and formulated in a clear way. In addition, the reporting person should receive feedback on the subject's follow-up actions within a maximum of three months.

How to design a reporting channel?
The foundation of the reporting channel is to ensure that the identity of the reporting person is kept confidential. It means there is a need to maintain discretion and not share information with a wide range of people. However, this is not synonymous with anonymity. Although the Directive itself does not provide for the obligation to introduce a completely anonymous channel, it cannot be excluded that, to a certain extent, it will be introduced by Polish provisions implementing the Directive. Such an obligation is already imposed by e.g. the Act of 1 March 2018 on counteracting money laundering and financing of terrorism.

The Directive does not determine specific requirements for the operation and service of the channel. Although there are some solutions developed in practice in this respect, the way the channel works and the relevant procedures will have to be tailored to the individual. When designing a special channel for reporting violations, it will be necessary to take into account its size and structure as well as the specifics of the industry in which it operates (some areas are considered more susceptible to e.g. corruption).

How to protect the whistleblower?
One of the overriding objectives behind the adoption of the Directive is to provide protection for the person reporting the infringement in accordance with the principles set out in the Directive. A whistleblower qualifies for it as long as there are reasonable grounds to believe that the information contained in the notification is true at the time it is made and that it falls within the scope of the Directive. Any form of retaliation, whether direct or indirect, is prohibited against such a person. The Directive, for example, mentions: dismissal, degradation or suspension of promotion, reduction of remuneration, changes in working hours, negative evaluation of results, imposing a disciplinary penalty, intimidation and mobbing, discrimination, failure to transform a fixed-term employment contract into an indefinite-term contract, causing damage (including reputational damage or financial loss), blacklisting, and more. The state is obliged to grant whistleblowers legal protection and certain facilities in court proceedings.

What are the consequences of non-compliance?
The Directive imposes on Member States the obligation to establish penalties against natural or legal persons which:

- hinder or try to impede reporting,
- retaliate against reporting persons,
- institute burdensome proceedings against applicants,
- violate the obligation to keep the identity of reporting persons confidential.

The Directive does not indicate the scale of these penalties, merely stating that they are to be effective, proportionate and dissuasive. At the moment, it is difficult to predict what penalties the Polish legislator will introduce, however, taking into account, in particular, the content of the government's draft act on the responsibility of collective entities, it is difficult to focus on leniency in this matter.

Can you we prepare?
Having an internal reporting channel is now considered good practice, even if the entity has no statutory obligation. The information provided in the notification may allow you to take appropriate preventive action before the violation will have occurred. However, if the violation has taken place, reporting may lead to the source of the problem being identified and appropriate corrective action can be taken. This gives you a chance to protect yourself from legal consequences, financial damage or damage to the company's image, or at least minimize their scope. Within next 19 months the solutions provided for in the Directive should be implemented into Polish legislation. However, it is worth taking care of introducing the right procedures for your company right now, without waiting for state coercion. Common sense and care for the company's image suggest the implementation of a reporting channel and appropriate procedures . Properly designed and maintained systems, as well as commitment on the part of the management, will testify to due diligence in the operation and integrity of the organization. ■

Within next 19 months the solutions provided for in the Directive should be implemented into Polish legislation. However, it is worth taking care of introducing the right procedures for your company right now, without waiting for state coercion.

DR FATIMA MOHMAND
Advocate, Of Counsel
at the D. Dobkowski sp. k.
Law Firm
Associated with KPMG
fmohmand@kpmg.pl

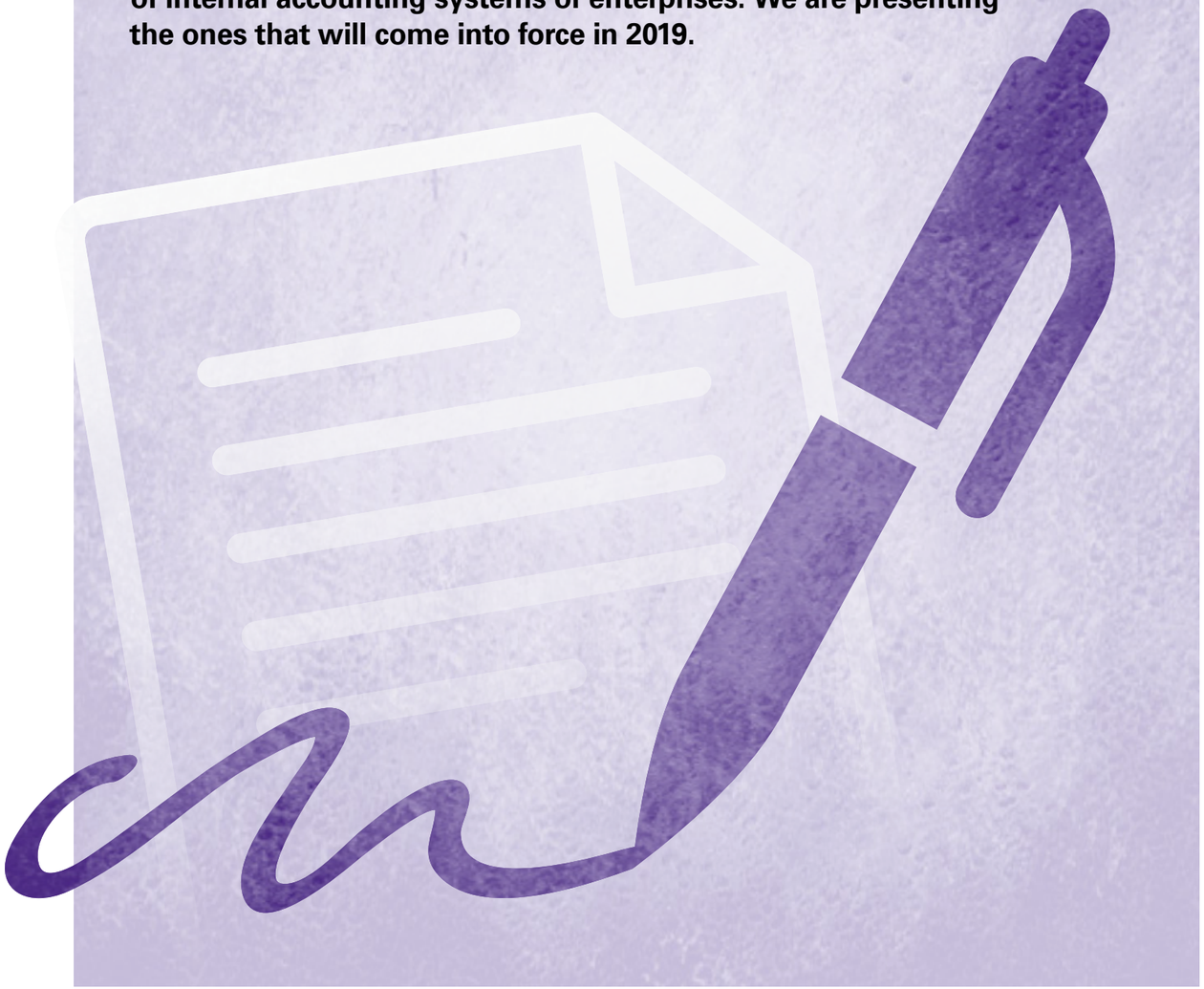
She specializes in business law, intellectual and industrial property, as well as in litigation regarding civil and criminal liability in business operations. She has conducted a number of cases related to cyber fraud, activities to the detriment of the company by abuse of rights and money laundering. She provides comprehensive legal advice in internal investigations conducted in companies (forensic proceedings), including the selection of the most effective legal instruments to obtain compensation for damages. She manages the regional office of the law office in Łódź. She obtained a PhD in law at the University of Łódź. Member of the District Bar Council in Łódź.

ALEKSANDRA JANISZEWSKA
Barrister Trainee, Junior Lawyer at the D. Dobkowski sp. k. Law Firm
Associated with KPMG
ajaniszewska2@kpmg.pl

She specializes in criminal law. She gained experience in law firms, courts and prosecutor's office. She is undergoing barrister apprenticeship at the District Bar Council in Łódź and in 2020 she will be taking her vocational exam.

VAT – THE CHANGES ARE COMING

In recent months, we have been following works on several acts amending the VAT Act. The changes will significantly affect the tax settlements of many taxpayers and will require adaptation of internal accounting systems of enterprises. We are presenting the ones that will come into force in 2019.



List of VAT payers – so-called white list

On September 1, 2019, provisions regarding the new list of VAT payers entered into force – the so-called white list, i.e. a list that contains information about each active VAT payer, including the date of registration for VAT purposes, date and reason for any deletion and reinstatement in the register, and the bank account number indicated in the taxpayer's identification application. From January 1, 2020, making a transfer to a contractor for the amount of over PLN 15,000 to a bank account other than the one specified in the list will result in in the loss of the entitlement to treat such an expense as tax deductible cost for the purpose of income tax and joint and several liability with the supplier for the supplier's tax obligations up to the amount of VAT resulting from the given transaction. The buyer will be able to avoid the sanction by submitting notification about such action to the Head of Tax Office relevant to the supplier within 3 days from making bank transfer. In connection with the entry into force of the above provisions, taxpayers should make sure that the bank account they provided to their contractors is indicated on the "white list". On the other hand, to their own procedures they will have to add ongoing verification of contractors' bank accounts before making transfers to them.

From January 1, 2020, making a transfer to a contractor for the amount of over PLN 15,000 to a bank account other than the one specified in the list will result in treat such an expense as tax deductible cost for the purpose of income tax and joint and several liability with the supplier for the supplier's tax obligations up to the amount of VAT resulting from the given transaction.

Mandatory split payment mechanism

On November 1, 2019, provisions introducing the mandatory split payment mechanism will enter into force. The split payment will replace the currently functioning reverse charge mechanism and the institution of joint and several liability, which in the opinion of the Ministry of Finance did not bring the expected results in terms of reducing irregularities and fraud in VAT. Split payment will be mandatory when making the payment of the amount due between VAT payers, resulting from an invoice which total amount is over PLN 15,000, and the subject of which are goods or services listed in new Annex 15 to the VAT Act (the seller is obliged to accept payment in this way). Invoices documenting these transactions must include an annotation "split payment mechanism" ('mechanizm podzielonej płatności'). Failure to add this annotation will result in a penalty in the amount of 30% of VAT resulting from this invoice. However, the sanction will not apply if, despite the lack of annotation, the buyer pays for the invoice under the split payment mechanism. A sanction of the same amount will be a imposed on the buyer for making a payment in violation of the split payment mechanism, unless the supplier settles the total amount of VAT resulting from such an invoice. From 2020, another sanction will enter into force, i.e. the lack of the right to include the expense as tax deductible costs under CIT and PIT tax. Violation of the provisions on split payment may also result in the liability of persons responsible for tax settlements of a taxpayer under the Penal Fiscal Code. In order to implement the above changes into practice, taxpayers will have to adapt their internal accounting systems (primarily where VAT is currently settled by the buyer and will be settled by the seller under the general rules) and change the content of the issued invoices. Due to the fact that under the split payment mechanism

SPLIT PAYMENT

The essence of the split payment mechanism is to make payments for each individual invoice for the goods or services purchased by the buyer using one transfer, but to two bank accounts (technical details should be agreed with the bank) as follows:

- **the net invoice amount will be transferred to the supplier's current account,**
- **the amount of VAT from the invoice will be transferred (by bank) to a separate, special supplier's account for the purposes of VAT settlement ("VAT account").**

It is possible to make payment for more than one invoice with one transfer.

The taxpayer will be able to use the funds accumulated on the VAT account only to pay VAT obligations, but also CIT, PIT, excise duties, customs duties and ZUS contributions, or to make a transfer to the contractor's VAT account. Release of these funds will only be possible at the taxpayer's request.

The Act provides for harmonization of VAT rates in the same product groups, as a general rule equaling down – to a lower rate. Most VAT rates based on the new VAT rate matrix will be effective from April 1, 2020. New VAT rates for books and magazines (including e-books and e-press) will, however, come into force on November 1, 2019.

the amount of VAT is transferred to the taxpayer's VAT account (with limited rights of disposing the money), split payment may also affect the financial liquidity of enterprises. What's more, the amount of VAT will have to be paid in PLN, even if the invoice is issued in a different currency.

New definition of the first occupation

On September 1, 2019, an amendment changing the definition of "first occupation" entered into force. This change is dictated in particular by the judgment of the CJEU in case C-308/16, according to which the definition of the first occupation included in the Polish Act on VAT was incompatible with Directive 2006/112/EC. In the light of the changed definition, the first occupation is not dependent solely on the performance of the activity subject to VAT (sale, rent). The first occupation also includes the own use of buildings, structures or parts thereof, after their construction or improvement. In some cases, the changes result in earlier occupation, which consequently affects the possibility of applying VAT exemptions for real estate supplies.

ew matrix of VAT rates and binding rate information

The new regulations also introduce the so-called a new matrix of VAT rates, which uses Combined Nomenclature (CN) codes to identify goods for VAT – instead of the classification PKWiU 2008 symbolism used so far, and for the services the newer classification PKWiU 2015. The Act provides for harmonization of VAT rates in the same product groups, as a general rule equaling down – to a lower rate. Most VAT rates based on the new VAT rate matrix will be effective from April 1, 2020. New VAT rates for books and magazines (including e-books and e-press) will, however, come into force on November 1, 2019. A novelty in Polish law tax rate will be binding rate information (BRI). BRI will be a decision issued by the Director of National Tax Information for VAT purposes, which will include, among others classification of goods according to the CN or according to the Polish Classification of Construction Objects, or according to PKWiU and the relevant VAT rate. The BRI is to provide later protection to the taxpayer who will apply the given rate according to the issued decision. It will be possible to apply for BRI from November 1, 2019, however, it will be binding for tax authorities only from April 1, 2020.

Summary

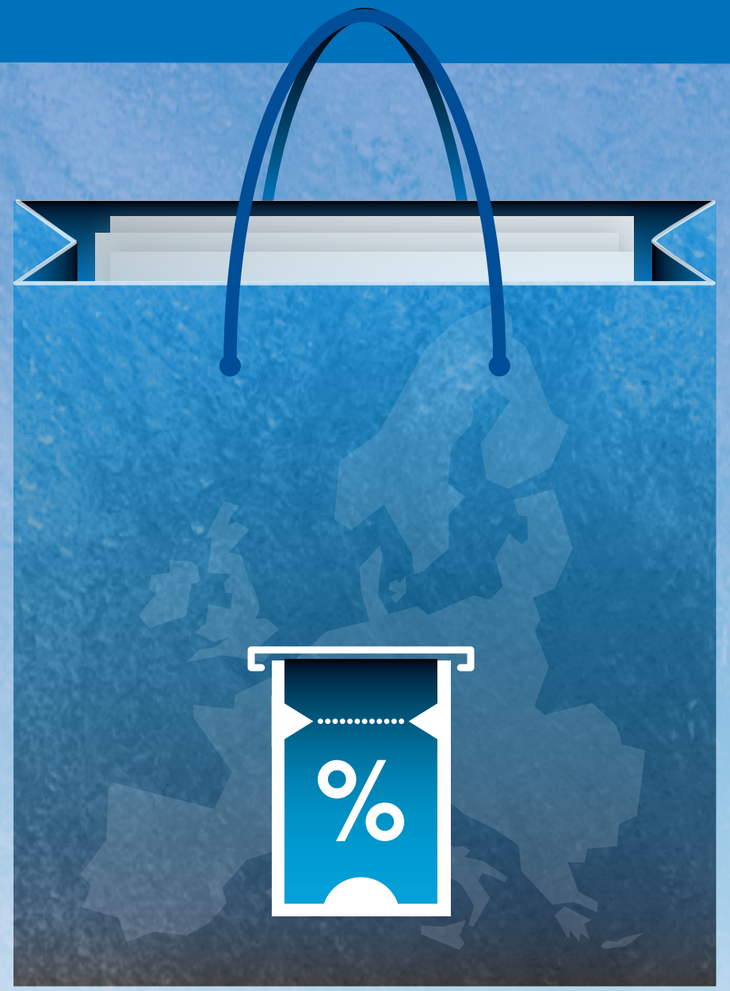
The scope of the amendments is very wide, and a significant part of the changes will affect almost all taxpayers. Although we know the final shape of the regulations, as well as the position of the Ministry of Finance in relation to many questions raised during parliamentary works on draft amendments, not all doubts have been eliminated (e.g. the issue of the possibility of continuing settlements under multilateral netting in the case of transactions to which the mandatory split payment refers). Therefore, it will be crucial to monitor the practice of tax authorities in the first months from the entry into force of the provisions in question, including the first individual binding rulings issued in relation to the new provisions. ■

NATALIA KŁOŚ
Tax Expert in the VAT Team at KPMG in Poland
nklos@kpmg.pl

She specializes in the field of value added tax. She has 8 years of experience in tax consultancy for clients from various sectors. She is a graduate of the Faculty of Law and Administration at the University of Lodz.

MARTA JANASZEK
Tax Expert in the VAT Team at KPMG in Poland
mjanaszek@kpmg.pl

She specializes in the field of value added tax. She joined KPMG in 2016. She participates in projects related to indirect taxes. She is a graduate of the Faculty of Law and Administration at the University of Warsaw.



EUROOBLIGATIONS AS A SOURCE OF FUNDING LARGE INVESTMENT PROJECTS

Development always requires capital. Many Polish enterprises have very large investment plans, and the economic situation encourages investment, despite many restrictions that can be seen in the European economy. Polish enterprises are modernizing their production potential and introducing new technologies. However, it is not possible to implement the entire investment program from EU funds or generated own funds.

»

If an investment program is significantly high, the question arises how to finance the project. The easiest way – it seems – would be to apply to the bank for an investment loan. Other sources of capital could be: the Warsaw Stock Exchange and prepared IPO program, issue of corporate bonds by a project sponsor or acquire a business partner with a sufficiently high financing standards for the planned investment. By assumption, all the above-mentioned ways to raise capital are good as long as the investment project defends itself with a properly prepared business plan in which the financial model demonstrates the ability to pay the debt in a certain amount and time.

What is the situation on the financial market?

Objectively, however, one should look at the financial market, which after various economic events, both in Poland and in the world, has become difficult. This difficulty, of course, is not that the economic situation is conducive to generating cash by companies that should handle investments on their own with a significant increase in economic exchange in the country and abroad. One of the main reasons are administrative restrictions by commercial banks on creating active lending and the lack of free capital on the market. Even a well-prepared investment project can receive a negative assessment of the bank's risk department, and the decision does not have to be based on the premise of not being able to generate sufficient cash. The reason may be e.g. too innovative nature of the project or the lack of comparable investments carried out on the market. In this case, one can formulate a general thesis that banks around the world are not institutions aimed at financing civilization progress, and their purpose is rather safe administration of funds entrusted by clients to which they should guarantee an appropriate rate of return. However, the financial market is not only banks, but a whole group of entities that are looking for forms of making money and depositing financial surpluses other than bank deposits, of course with profitability other than offered by banks. In such a case, a well-prepared investment project may find a source of financing among such investors who will act in the form of created funds or as institutional investors. Therefore, questions arise – where to find such investors and how to encourage them to co-finance?

Where to look for investors?

In the current economic situation, a lack of sufficient free capital on the Polish market can be observed, the owners of which could be willing to buy e.g. corporate bonds of significant value, issued by an entity that has a large investment project in its plans (ignoring the situation of state-owned companies, which is significantly different). It is hard not to notice that Poland – despite very great progress in the development of the capital market – is not the first choice in the search for investment projects for the largest institutional and individual investors. This situation will certainly not change in the short term. Therefore, the question arises whether the Polish entity, which is planning to implement a large investment project, has a chance to obtain funds from the European capital market in the form of issuing bonds or Eurobonds.

What is Eurobond?

Eurobond is a convertible bond in which the issuer undertakes to meet a specific benefit, i.e. to pay the Eurobond holder the receivable together with interest, at specified intervals, until the maturity date. The commitment contained in the Eurobonds is practically the same as in the classic bonds. Its characteristic feature, however, is that it is denominated in a currency other than the currency of the country in which it is offered for purchase. Most often, Eurobonds are denominated in euros and in US dollars. Initially, they were securities issued by governments and financial institutions (mainly large banks), currently they are issued by large enterprises with a high investment rating.

Even a well-prepared investment project can receive a negative assessment of the bank's risk department, and the decision does not have to be based on the premise of not being able to generate sufficient cash. The reason may be e.g. too innovative nature of the project or the lack of comparable investments carried out on the market.

Why is it worth considering issuing Eurobonds?

The issue of Eurobonds is for the investor an opportunity to access the international capital market, which is very diverse, on which various risks are accepted, and investors themselves assess the issuer and the investment project, which it intends to finance from the acquired funds. The markets on which Eurobonds are issued have appropriate legal regulations, operating under financial supervision guaranteeing certainty and stability of trading. What distinguishes them the most, however, is financial liquidity and the way in which securities trading is organized. The Polish market will not be affected by capital, which is present on the market in London, New York or Frankfurt. It is very difficult to assess whether this situation will change in the nearest future. On the capital market, eurobonds with fixed interest are most often bought – these are also the most common securities. However, floating rate Eurobonds based on an international reference rate are also issued. Most Eurobonds are issued under British law or the jurisdiction of New York, no matter where they are distributed and listed. The maturity dates for these securities vary and can range from several to several dozen years. The most popular, however, are those issued for a period of 3 to 10 years.

The issue of Eurobonds is for the investor an opportunity to access the international capital market, which is very diverse, on which various risks are accepted, and investors themselves assess the issuer and the investment project, which it intends to finance from the acquired funds. The markets on which Eurobonds are issued have appropriate legal regulations, operating under financial supervision guaranteeing certainty and stability of trading. What distinguishes them the most, however, is financial liquidity and the way in which securities trading is organized. The Polish market will not be affected by capital, which is present on the market in London, New York or Frankfurt. It is very difficult to assess whether this situation will change in the nearest future.

REQUIREMENTS FOR THE ENTITY

An entity that intends to issue Eurobonds must:

- **have adequate financial standing to issue unsecured debt with a relatively high amount,**
- **have an investment rating from one of the three larges rating agencies in the world – Standard & Poor's, Moody's or Fitch Ratings (Eurobond issuers use their services the most),**
- **meet the conditions for emissions – emissions are most desirable in not less than EUR 500 million, however another one may be agreed, e.g. EUR 250 million.**

What should you remember when choosing Eurobonds?

A very important issue when issuing Eurobonds is structuring the issue in a way that allows investors to take advantage of the benefits of concluded double taxation treaties. For tax optimization (which should not be interpreted negatively, as each country has the right to individually determine the amount of taxes) a special purpose company ("SPV"), established in one of the countries with which Poland has signed the Double Tax Convention, is used, which does not charge tax on Eurobond income, or the tax rate is relatively low. Such a special purpose company issues Eurobonds and transfers the proceeds from the issue to the parent company of the entity most often by granting a loan. Very often, the parent company gives investors guarantees that the daughter company (Eurobonds' issuer) will meet its obligations under Eurobonds. In the case of plans to organize the issue of Eurobonds, consideration should

Eurobond is a convertible bond in which the issuer undertakes to meet a specific benefit, i.e. to pay the Eurobond holder the receivable together with interest, at specified intervals, until the maturity date. The commitment contained in the Eurobonds is practically the same as in the classic bonds.

be given to choosing the right advisors (financial, legal, transactional) and participants. The organization of Eurobond issues requires proper cooperation with investment banks operating on the international capital market and with brokerage houses that will be responsible for organizing the book of demand and distributing Eurobonds. It should be noted that in this type of issues it is advisable for transaction participants to be institutions of high reputation. Unfortunately, the trust of capital market participants has to be built for years. Reaching the best groups of investors is guaranteed only by banks, brokerage houses, agents, investment advisors enjoying the recognition and trust of capital market participants. Thanks to efficiently functioning network of involved financial institutions and advisors for issuing Eurobonds, it is possible to fully coordinate all activities related to the issue, which is crucial for its success.

Secondary trading in Eurobonds takes place primarily on the OTC market (Over-the-Counter). Eurobonds are also listed on stock exchanges. The main markets in which they appear are London Stock Exchange and Luxembourg Stock Exchange. Eurobonds of Polish issuers are also listed on the Dublin Stock Exchange. A very good example of the fact that it is worth reaching for capital from abroad is one of the Polish energy companies that placed eurobonds worth EUR 500 million, with the demand reported by investors exceeding EUR 4.3 billion. The company obtained record-breaking favorable financing conditions in the form of 5-year bonds for a total amount of EUR 500 million, offering investors the lowest interest rate in the history of issues in Central and Eastern Europe. Bond yield is 98 bp above mid-SWAP (coupon 1.625%). The scale of investor interest exceeded the amount of offered bonds eight times. Fitch Ratings later assigned BBB + to this program, and Moody's – (P) Baa1 (also equal to the company's long-term rating). The issue was preceded by meetings of the company's representatives with over 60 investors in Paris, London, Frankfurt and Amsterdam.

To sum up, it should be emphasized that Polish companies do not sufficiently use the opportunities offered by access to the international capital market. KPMG with a network of offices in major business centers of the world can be a comprehensive advisor on the issue of Eurobonds. ■

MAREK KRÓL
Attorney-at-Law
at D. Dobkowski sp. k.
Law Firm associated
with KPMG in Poland
marekkrol@kpmg.pl

At D. Dobkowski, he is responsible for banking and finance practice as well as mergers and acquisitions. He specializes in conducting merger and acquisition financing transactions, financing the purchase and construction of commercial properties and transactions in the energy sector, including renewable energy. In recent years, he managed banking and finance team at several international law firms. He prepared several legal documentation of corporate bond issues issued by Polish entities. He managed a group of lawyers examining the legal status of over 100 properties and advised on their acquisition. He also advised foreign creditors in out-of-court restructuring proceedings and prepared legal documentation of the purchase of irregular debt package (NPL) from Polish banks.

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 36, 40-028 Katowice
tel. +48 (32) 778 88 00
fax +48 (32) 778 88 10
e-mail: katowice@kpmg.pl

ŁÓDŹ
ul. Składowa 35, 90-127 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