

December 2020

Retail sales tax to enter into force on 1 January 2021

In response to a press inquiry, the Ministry of Finance confirmed that it does not intend to further delay the entry into force of the new retail sales tax.

Introduction of the new tax (established by way of the Act of 6 July 2016) has already been postponed several times, due to the ongoing dispute between Poland and the European Commission over its compatibility with EU single market regulations. Now, however, everything indicates that the retail sales tax is to enter into force on 1 January 2021.

More details can be found below.

Taxpayers, object and rates

The new tax will be imposed on retailers and cover revenue from retail sales.

The Act defines 'retail sales' as the sale of goods to consumers, constituting part of the seller's business activity, based on a contract concluded at the business premises or off-premises (within the meaning of the Act on consumer rights), carried out in the territory of the Republic of Poland, also in situations where the sale of goods is accompanied by provision of a service, which is not registered separately.

The tax obligation shall arise when the seller's revenue in a given month exceeds the threshold of PLN 17 m and apply to the excess amount, earned from that moment until the end of the month.

In other words, the tax base will be the surplus of revenues from retail sales over PLN 17 m earned in a given month.

The retail sales tax rates will be as follows:

- 0.8 percent of the tax base, from the excess of revenue not exceeding PLN 170 m;
- 1.4 percent of the excess of revenue exceeding PLN 170 m.

Collection procedure

Without prior call from the tax authorities, taxpayers are required to:

- submit tax returns, prepared in accordance with the template, to the head of the competent tax office;
- calculate and remit the tax to the account of the competent tax office for monthly settlement periods, by the 25th day of the month following the month for which the tax is due.

Retailers whose monthly revenue from retail sales does not exceed PLN 17 m are not required to submit returns on the tax amount due.

Dispute between Poland and the European Commission

By way of decision issued in 2017 the Commission found Polish provisions on the retail sales tax incompatible with the single market regulations, since, in the Commission's assessment, the measure constituted unauthorized State aid for smaller businesses, less burdened with the retail sales tax. The Commission argued that the provisions would confer an unlawful advantage to "under-taxed" small businesses and therefore the new tax should be considered State aid.

A similar stance was taken by the Commission in relation to the Hungarian advertisement tax targeted at the largest companies. Both countries challenged the Commission's decision and brought it before the European General Court.

In its judgment of 16 May 2019 delivered in joined Cases T-836/16 and T-624/17, the European General Court upheld the two actions for annulment brought by Poland and Hungary. However, the Commission appealed against the judgment of the General Court to the Court of Justice of the European Union.

In her opinion issued on 15 October 2020, Juliane Kokott, Advocate-General of the Court of Justice of the European Union, stated that the Polish tax on retail sales does not infringe the EU law and concluded that the appeal brought by the Commission should be dismissed.

She noted that in the recent years the rulings delivered by CJEU seem to support the thesis that progressive taxation may be based on turnover, since "the amount of turnover constitutes a criterion of differentiation that is neutral and a relevant indicator of a taxable person's ability to pay". This applies equally to the rules on State aid. In the Advocate-General's opinion, in the absence of European Union rules governing the matter, it falls within the tax competence of the Member States to designate bases of assessment and to spread the tax burden across the various factors of production and economic sectors.

CJEU's judgment in this case should be issued in early 2021.

If you would like to learn more about the issues discussed, please do not hesitate to contact us at mam pytanie@kpmg.pl

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