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POLISH CHAMBER OF COMMERCIAL REAL ESTATE

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Key tax topics for the real estate industry

first half of 2026

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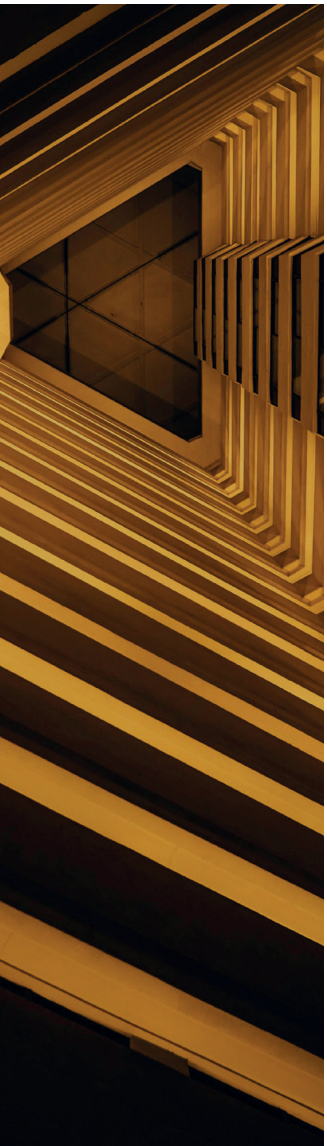


Introduction

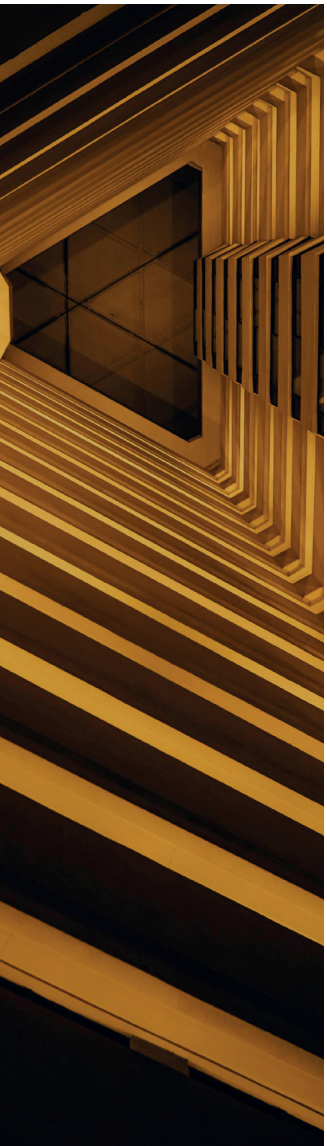
The first half of 2026 in the field of tax law has been marked by the ongoing digitalization of reporting processes, which is becoming a key element of tax risk management. Taxpayers, including those from the commercial real estate sector, are operating in an environment of increasing data transparency.

A significant change was the implementation of the obligatory e-invoicing system (Krajowy System e-Faktur, KSeF), which has transformed the document circulation and the sales reporting process – forcing data consistency between accounting records and tax reporting.

The next stage of this transformation is the introduction of JPK_CIT, which in practice will require even greater detail and consistency in the tax classification of business transactions – already at its recording stage. Combined with data from KSeF, this enhances the analytical capabilities of tax authorities and affects the way tax audits are conducted.

These developments form part of a broader European trend - e-invoicing systems are already in place or being implemented, i.e., in France, Spain, Hungary and Romania. At the same time, other jurisdictions apply solutions such as e-Bilanz in Germany, FEC in France, and SAF-T in Portugal. The direction of the change is clear – digital tax reporting is becoming the new standard.

At a global level, 2026 is the first year of the Pillar II regulations in Poland, bringing new reporting obligations and the need to process large volumes of tax data.



In this issue of Tax Flash, we provide an overview of the most important tax topics for the real estate sector, in particular:

- tax audits, verification activities, and tax proceedings,
- withholding tax (including the application of the 2025 explanatory guidance),
- first experiences related to Pillar II,
- most recent case law and tax rulings.

We hope you find this edition insightful and informative.

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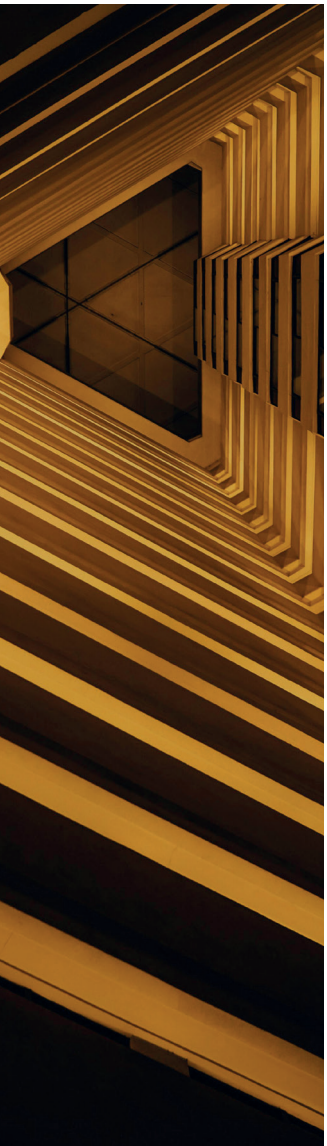


1. Tax audits and tax proceedings 2025/2026

1.1 Trends in audit activities of the National Revenue Administration

On 10 February 2026, the Ministry of Finance published a summary of the audit activities of the National Revenue Administration (Krajowa Administracja Skarbowa, KAS) for 2025. The data confirms a shift in the operating model of the tax administration, driven by the progressing digitalization of tax reporting.

A clear decline is observed in the number of traditional tax and customs audits, in favor of verification activities. These have now become the primary tool for reviewing tax settlements - less formal in nature, but in practice often precede formal audits.

1.1.1 Shift towards targeted activities

The data confirms a move away from mass audits towards the selective identification of taxpayers based on data analytics. In the case of standard irregularities, tax authorities first undertake verification activities, while audits - particularly customs and fiscal inspections - are primarily initiated, where tax risk is increased.

From the taxpayer's perspective, this results in more precise and faster responses from the authorities, based on the available digital data analysis. With the continued development of digital reporting (including the implementation of KSeF and introduction of JPK_CIT) - this trend will strengthen further, and so will analytical capabilities of the tax authorities.

1.1.2 Changes "in numbers"

Data published by KAS confirms its increased effectiveness - despite reduction in the number of traditional audits.

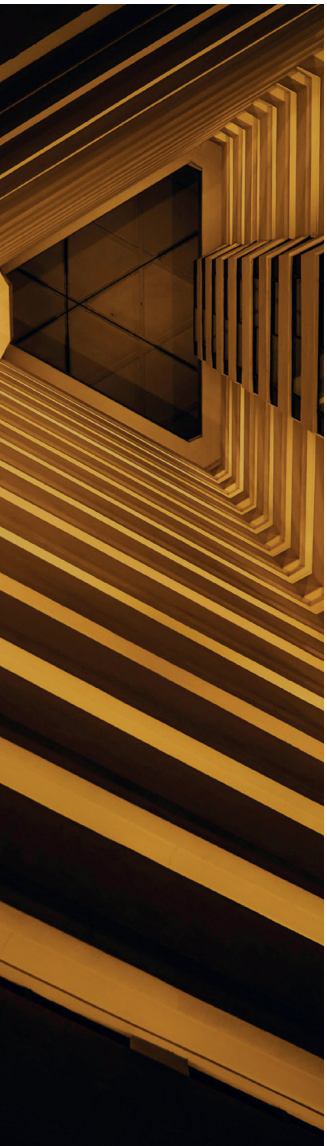
The decrease of customs inspections and tax audits by 27,4% and 11,3% (respectively) resulted at the same time in an increased value of the audit findings by 46,4% (to PLN 6,52 billion). Additional payments resulting

from customs and fiscal inspections rose by 18,5%. Notably, there has also been an increase in both the number and the value of detected fictitious invoices ("FV").

Key figures (2024–2025)

Area of activity	2024	2025	Change
Total number of activities	approx. 2,41 million	approx. 2,64 million	+9,4%
Total findings	PLN 14,76 billion	PLN 19,05 billion	+29,1%
Number of customs and fiscal inspections	7.043	5.113	-27,4%
Findings from customs and fiscal inspections	PLN 4,45 billion	PLN 6,52 billion	+46,4%
Payments resulting from customs and fiscal inspections	PLN 1,7 billion	PLN 2 billion	+18,5%
Number of tax audits	9.829	8.722	-11,3%
Verification activities	2,39 million	2,62 million	+9,6%
Findings from verification activities	PLN 8,61 billion	PLN 11,02 billion	+28%
Detected fictitious invoices	293,6 thousand	376,8 thousand	+29,2%
Value of detected fictitious invoices	PLN 8,71 billion	PLN 10,9 billion	+25,1%

Table 1 – summary of audit activities published by KAS[1]



Commentary

The data confirms a shift towards a selective model based on data analytics and risk identification. Formal audits are primarily initiated in cases where the authorities already possess preliminary evidence.

In practice, audit activities are often triggered by the identification of specific data points, such as:

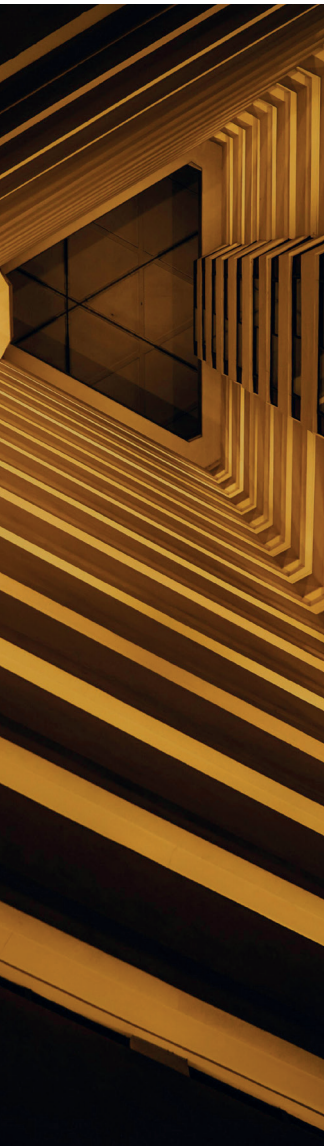
- a persistent tax loss
- adjustments made after the closing of reporting periods
- significant payments to foreign entities (e.g. dividends, interest, royalties)
- material deviations in reported data

In the current environment, key factors include data consistency, the quality of documentation, and a prompt response to inquiries from the authorities.

1.2. Three dimensions of KAS supervision – verification activities, tax audits and customs and fiscal inspections

In light of the above observations, below we present a concise overview of the key differences between verification activities, tax audits and customs and fiscal inspections.

1 Based on an article from: KAS w 2025 r. przeprowadziła 2,64 mln działań w zakresie weryfikacji prawidłowości rozliczeń podatkowych - Ministerstwo Finansów - Krajowa Administracja Skarbowa - Portal Gov.pl

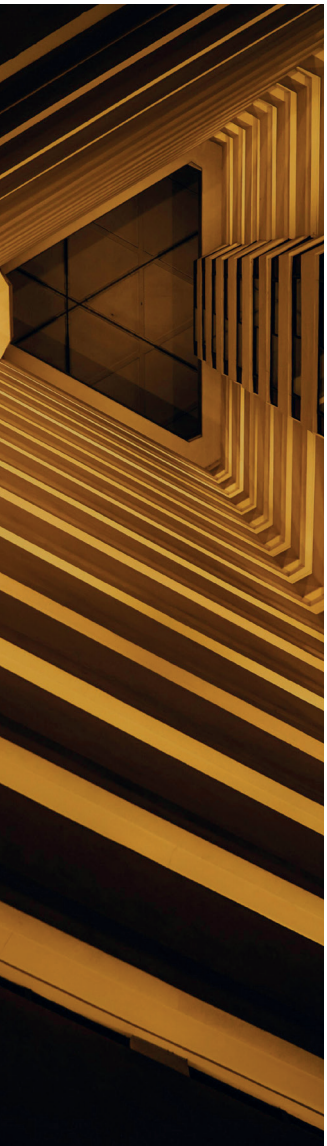


Criterion	Verification Activities	Tax audit	Customs and fiscal inspection
Competent authority	Head of the Tax Office	Head of the Tax Office	Head of the Customs and Tax Office
Legal basis	Section V of the Tax Ordinance Act (Articles 272-280)	Section VI of the Tax Ordinance Act (Articles 281-292)	National Revenue Administration Act (Articles 54-94)
Scope/ subject matter	Preliminary verification of the formal accuracy and reliability of tax returns	Verification of compliance with tax obligations	Review of compliance with customs and tax regulations, including the accuracy of settlements
Notification	No obligation to notify	Generally mandatory (minimum 7 days before, exceptions apply)	No obligation to notify (initiated upon presentation of the inspector ID)
Duration	Not specified - depends on the nature of the case and taxpayer cooperation	Time limits set under the Entrepreneurs' Law (6 - 48 business days per year, depending on the size of the taxpayer)	3 months (in practice often extended to approximately one year)
Authority of inspectors	Requests for explanations, submission of documents, inspection of residential premises (with consent)	Access to business premises, examination of accounting records, witness interviews, appointment of experts	Broad powers, including searches, examination of goods, and interviews
Correction of tax returns	Possible at any time	Possible until the audit commencement; suspended during the audit; possible after its completion (generally within 14 days)	Possible within 14 days of receiving the authorization, or - the inspection results; suspended during the inspection
Place of conduct	At the authority's premises (correspondence-based) or at the taxpayer's premises	At the taxpayer's premises or another location related to business activity/ document storage; also at the authority's premises with taxpayer consent	At the taxpayer's premises, the authority's premises, or another location related to business activity/ document storage
Form of completion	Notification of no irregularities, request to correct filings, or no formal conclusion	Audit report; in case of irregularities - initiation of tax proceedings	Inspection result; in case of irregularities - transformation into tax proceedings

Table 2 – prepared by the authors

1.3. Customs and fiscal inspection as the most intrusive form of oversight

Customs and fiscal inspections remain the most stringent form of verification applied by KAS. They are primarily used in cases of the highest complexity, in particular those involving VAT settlements, transfer pricing, and international transactions, including payments subject to withholding tax (WHT).



Unlike tax audits, they may be initiated without prior notification, and the authorities are granted broad powers - including access to documentation, company premises, and data relating to customers and suppliers. An important procedural element is also the 14-day period for submitting a correction of tax returns.

Although the statutory length of an inspection is three months, in practice it is often extended, which requires appropriate taxpayer engagement. The inspection concludes with the official inspection result – and this may be a precursor of further actions from authorities' side.

Commentary

The start of a customs and fiscal inspection requires the taxpayer to organize efficient internal processes - including preparation of documents and the appointment of individuals responsible for liaising with the authorities.

During an inspection, the authorities typically request a broad scope of information and documentation - ranging from transfer pricing documentation (including benchmarking analyses), through agreements and arrangements with counterparties, to corporate, employee-related, and other tax-related materials. The authorities may also review historical periods (within the statutory limitation period), which in practice, for example, in the case of corporate income tax (CIT) - may extend up to six years back.

As a result, appropriate, effective internal process is key to ensure the company would be able to deliver all the requested documentation and the proper employees would be delegated. Worth considering is also the engagement of a professional representative to support the process of gathering materials, preparing explanations, and maintaining ongoing communication with the authorities.

1.3.1 Practical examples of customs and fiscal inspections

Based on our experience, inspections - particularly customs and fiscal ones - are currently focused primarily on transfer pricing and withholding tax (WHT). Below you will find several selected examples illustrating the current approach of the tax authorities.

1.3.1.1 Reclassification of the payment as the dividend

In one case, due to limited engagement by the taxpayer during the inspection (including a lack of the ongoing communication from the foreign personnel), the authority concluded that payments made to a foreign related entity effectively constituted dividends, subject to withholding tax (WHT) at a rate of 19%. This assessment was made despite the absence of formal corporate documentation (e.g. dividend resolutions), whereas - according to the taxpayer - the payments were intended as donations.

1.3.1.2 Challenging beneficial owner status

During the inspection, the authorities challenged the application of a WHT exemption on interest arising from a loan formally concluded with a direct shareholder. The shareholder was considered by the authority to be an intermediary entity that did not meet the criteria of a beneficial owner. As a result, the WHT exemption was denied.

At the same time, the authority indicated that the ultimate recipient of the interest payments could be recognized as the beneficial owner, which could allow for the application of a WHT preference rate under the relevant double tax treaty (DTT) - rather than a full exemption on the payment to the direct shareholder.

1.3.1.3 Requirement to prepare detailed profitability analysis

As part of the proceedings, the authorities required the taxpayer to prepare comprehensive cost and revenue breakdowns - covering both transactions with related and non-related parties. The taxpayer's objective was to demonstrate that the loss was incurred on transactions with non-related parties, while transactions with related entities were within an arm's length (as supported by benchmarking).

1.3.1.4 CIT correction as an inspection trigger

In another case, the initiation of activities by the authorities was most likely the consequence of a taxpayer submitting an upward correction of the CIT return (together with an additional tax payment). In practice, such actions may serve as a signal for the authorities to conduct a more in-depth review - particularly in the area of the transfer pricing.

1.3.1.5 Challenging the protection given by the clearance opinion (WHT)

During the inspection, the authorities questioned the clearance opinion held by the taxpayer with respect to WHT. A base for such a conclusion was inspection findings, that the facts presented in the application did not correspond to the findings made during the inspection itself. As a result, beneficial owner status has been challenged and the right to the exemption was refused.

Commentary

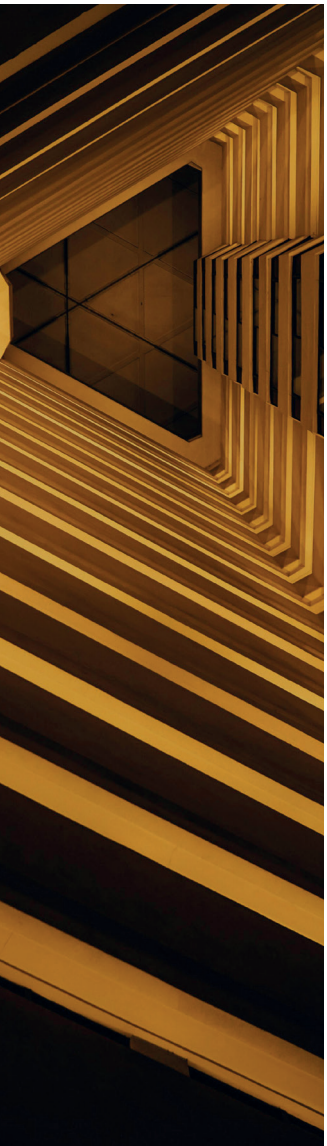
The above examples confirm that tax authorities are adopting an increasingly substance-based approach when assessing tax settlements - focusing not only on formal documentation, but primarily on the actual nature of transactions and the consistency of reported data.

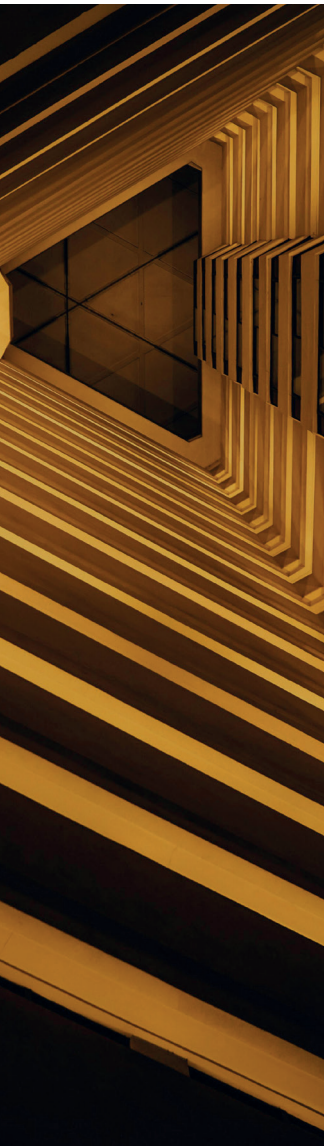
At the same time, in practice, the quality of communication with the tax authorities and the taxpayer's operational efficiency are becoming increasingly important factors. The timely and complete submission of information and documentation is now a key element in mitigating tax risk.

Deficiencies in this area - particularly delays, inconsistencies, or incomplete evidence - may lead to situations where the tax authorities make their own determinations, which are often less favorable from the taxpayer's perspective.

1.4. Taxpayer-oriented changes

In the context of the increasing effectiveness of tax authorities' actions, it is also worth noting legislative changes that strengthen the position of taxpayers in their relations with the tax administration.





1.4.1 Amendments to the Tax Ordinance Act

Pursuant to Article 54 § 1(7c) of the Tax Ordinance Act[2], where a tax audit or customs and fiscal inspection exceeds six months from the date of its initiation, the authority loses the right to charge late payment interest for the period following the expiry of that timeframe. The above limit excludes, among others, periods of suspension of the audit, statutory deadlines for specific procedural actions, and delays resulting from circumstances attributable to the taxpayer or beyond the authority's control.

This regulation has been in force since 4 November 2025 and applies to audits initiated within six months prior to the entry into force of the amendment, provided that they were not completed before that date. In practice, this means that the protection extends not only to audits initiated after that date, but also to certain ongoing proceedings.

In addition, Article 122 of the Tax Ordinance Act has been supplemented with § 2, according to which any irresolvable doubts as to the facts are to be resolved in favor of the taxpayer. This change constitutes a significant extension of the in dubio pro tributario principle, which previously applied only to interpretative doubts regarding legal provisions and now also covers factual uncertainties.

1.4.2 Shortening of the standard VAT refund period

Worth noting is the amendment to Article 87(2) of the VAT[3] Act, effective from 1 February 2026, which shortens the standard VAT refund period from 60 to 40 days. This change accelerates the tax refund to the taxpayer's bank account (exceptions apply).

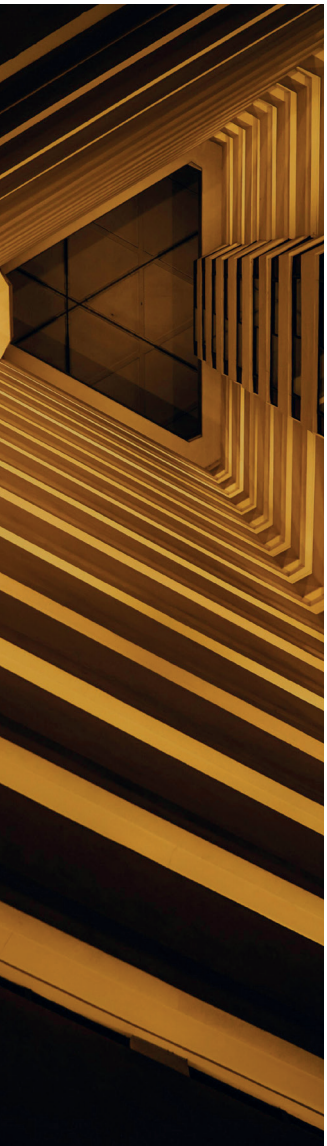
1.4.3 Changes to the CIT exemption for collective investment vehicles without a registered office in Poland

Pursuant to Article 6(1)(10) of the CIT[4], Act, an open-ended investment funds operating under the Investment Funds Act[5] are exempt from corporate income tax (CIT). A similar exemption, provided for in Article 6 (10a) of the CIT Act, applies to so-called collective investment vehicles, i.e. foreign entities that are equivalent to Polish investment funds referred to in Article 6(1)(10) of the CIT Act.

Until the end of 2025, the conditions that foreign funds were required to meet in order to benefit from the exemption were more stringent than those applicable to Polish investment funds. Moreover, the exemption did not cover entities established outside the European Union (EU) or the European Economic Area (EEA).

According to the Court of Justice of the European Union (CJEU), these conditions were discriminatory and infringed the principle of the free movement of capital.

2 Act of 29 August 1997 – Tax Ordinance Act (Journal of Laws of 2025, item 111, as amended)
3 Act of 11 March 2004 on Value Added Tax (Journal of Laws of 2025, item 775, as amended)
4 Act of 15 February 1992 on Corporate Income Tax (Journal of Laws of 2026, item 554)
5 Act of 27 May 2024 on Investment Funds and the Management of Alternative Investment Funds (Journal of Laws of 2026, item 60)



As a result of Poland aligning its regulations with the CJEU[6] rulings, an amendment to the CIT[7], Act entered into force on 1 January 2026, introducing two significant modifications to the exemption under Article 6(1)(10a) of the CIT Act:

1) The exemption no longer requires a collective investment vehicle to be externally managed by another entity. Foreign funds that are internally managed may now benefit from the exemption, provided that such management structure is permitted in the fund's jurisdiction of residence.

2) The restriction limiting the exemption to entities established in EU or EEA countries has been abolished. As a result, the exemption now also covers funds established in jurisdictions with which Poland has concluded relevant tax information exchange agreements.

The changes apply to income earned from 1 January 2026.

It should be noted, however, that pursuant to Article 6(4)(2) of the CIT Act, the exemption referred to in Article 6(1)(10a) does not apply to income from real estate as defined in Article 24b(1) of the CIT Act. This includes income derived from fixed assets in the form of buildings located in Poland that are made available, in whole or in part, under lease, tenancy or similar agreements.

1.4.4. Explanatory notes of 3 July 2025 on the application of the beneficial owner clause for withholding tax purposes – a practical perspective on year after publication

The tax explanatory notes issued on 3 July 2025 regarding the application of the beneficial owner clause (the WHT Explanatory Notes) have had a significant impact on WHT practice. They have reduced the level of uncertainty for withholding agents and established more predictable verification standards.

From a practical perspective, the following aspects are of particular importance:

- confirmation of the "look-through" approach and the concept of a so-called divided assets base;
- differentiation of the due diligence standard depending on whether the parties of the transaction are related or not;
- clarification that, as a rule, there is no requirement to verify beneficial owners status for payments for intangible services.

As a consequence, the issuance of the WHT Explanatory Notes should be assessed positively as a step towards increasing the predictability of WHT settlements.

However, the WHT Explanatory Notes do not eliminate the need for a case-by-case analysis of the facts, nor do they relieve withholding agents from the obligation to exercise due diligence and to properly document the right to apply tax preferences.

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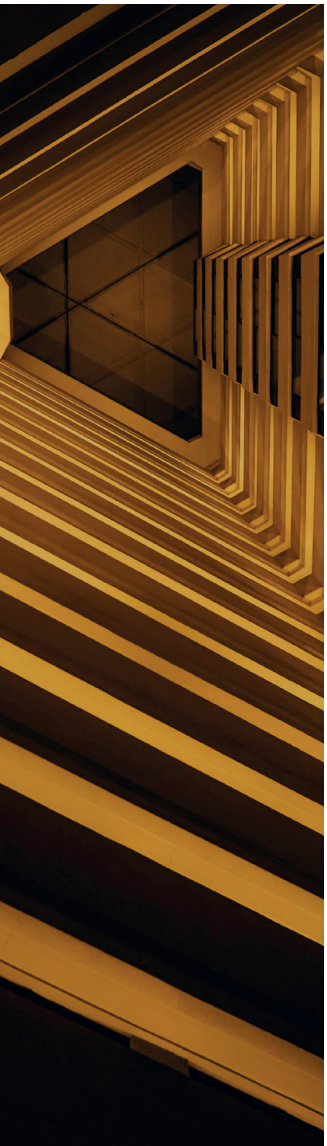
6 Judgement of the Court of Justice of 10 April 2014 in Case C-190/12 and Judgement of the Court of Justice of the EU of 27 February 2025 in Case C-18/23

7 Act of 6 November 2025 amending the Corporate Income Tax Act (Journal of Laws of 2025, item 1657)



At the same time, practical experience indicates that tax authorities and administrative courts do not always follow the conclusions set out in the WHT Explanatory Notes, which limits their role as a source of consistent practice. An additional challenge is the lack of clear intertemporal principles, in particular with respect to determining which factual scenarios are covered and from what point in time the WHT Explanatory Notes provide protection to taxpayers.

As a result, despite their important interpretative role, the scope of protection arising from reliance on the WHT Explanatory Notes remains, in practice, not fully predictable.

2. Global minimum tax (OECD's GloBE Pillar Two) - perspective of a Polish constituent entity[8] operating in real estate sector (including proposed changes)

2.1. General overview

The global minimum tax is an international initiative aimed at counteracting tax base erosion and profit shifting (BEPS) to low-tax jurisdictions.

The minimum tax applies to multinational enterprise groups (and, within the European Union (EU), also to so-called "large domestic groups") (the Group) whose consolidated annual revenue exceeds EUR 750 million in at least two of the four preceding fiscal years.

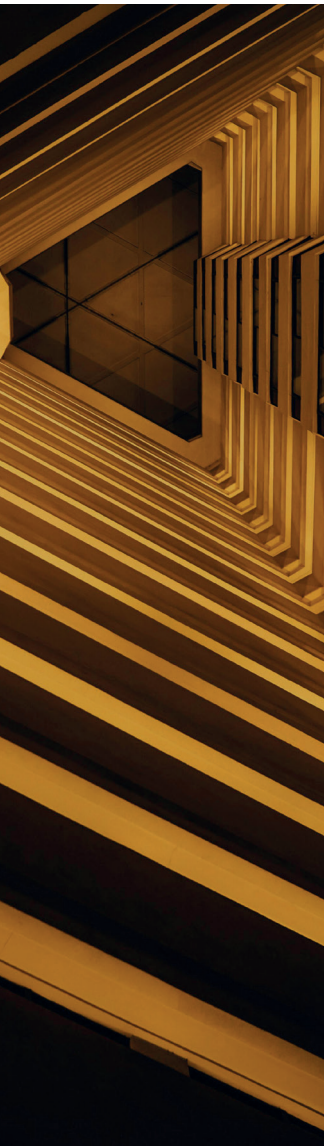
The objective of the system is to ensure a minimum effective tax rate of 15% through three core mechanisms:

1. Income Inclusion Rule (IIR) – the parent entity is required to pay a top-up tax where foreign subsidiaries are taxed below the 15% threshold.
2. Undertaxed Payments Rule (UTPR) – a secondary mechanism applied where the top-up tax cannot be collected at the level of the parent entity. In such cases, part of the tax may be allocated to other jurisdictions in which the Group operates.
3. Qualified Domestic Minimum Top-up Tax (QDMTT) – a domestic top-up tax allowing tax to be collected locally, before other jurisdictions apply their taxing rights.

2.2. Temporal scope of application

The international consensus (also adopted within the European Union) assumes that the global minimum tax applies to fiscal years beginning after 31 December 2023.

8 A constituent entity is a legal person, an organizational unit without legal personality, or a Polish branch of a foreign entity – forming part of a multinational or domestic group



Poland enacted the Act on minimum taxation (the "Act")[9] in November 2024, with an effective date of 1 January 2025.

Due to a delay compared to other jurisdictions participating in the initiative, the Polish legislator provided for the possibility of voluntary application of the Act for the 2024 fiscal year. This election applies to all entities of the Group located in Poland and requires the submission of a statement in the form of a notarial deed to the proper tax office between 1 March 2026 and 30 May 2026.

Commentary

The deadline for submitting the statement is statutory in nature and cannot be reinstated. Groups that did not make the election will not be required to comply with the obligations under the Act with respect to their 2024 fiscal year.

As a result, Polish entities belonging to such Groups will not be subject to administrative obligations falling due in 2026.

2.3. Deadlines under the Act

A characteristic feature of the global minimum tax regime is the relatively extended deadlines for both filing obligations and tax payments.

As a rule, constituent entities are subject to two key obligations:

1. Submission of the GloBE Information Return (GIR) – by the end of the 15th month following the end of the fiscal year[10];
2. Submission of the IIR / UTPR or QDMTT return, together with payment of the tax – by the end of the 18th month following the end of the fiscal year.

For the first year in which the minimum tax applies, these deadlines are extended by additional three months.

Where more than one constituent entity in Poland is subject to the above obligations, it is possible to designate only one for its fulfilment.

The Ministry of Finance has published templates for global minimum tax filings. At the same time, work is ongoing on a regulation specifying the technical rules for filing the GIR.

Commentary

Relatively extended deadlines mean that Polish constituent entities will, in practice, fulfil their obligations under the Act only in 2027 in respect of the 2025 fiscal year (assuming no election to apply the rules already for the year 2024).

In most cases, Polish constituent entities will not be required to submit the full GloBE Information Return (GIR) in Poland, provided that it is filed in another jurisdiction by an entity higher within the Group structure.

9 Act of 6 November 2024 on the Top-Up Taxation of Constituent Entities of International and Domestic Groups (Journal of Laws of 2024, item 1685), implementing Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and largescale domestic groups (hereinafter: Directive 2022/2523).

10 If another entity within the Group files the GIR in a jurisdiction with which Poland has a tax information exchange agreement, the Polish constituent entity is required only to submit a notification indicating the jurisdiction in which the GIR will be filed.

However, it is important to monitor whether Poland has an appropriate information exchange agreement in place with the jurisdiction in which the GIR is submitted. Otherwise, an obligation to file the GIR in Poland may arise.

2.4. Real estate investment vehicles (REIV) exemption

From the real estate sector, one should pay attention to the exemption provided for so-called real estate investment vehicles (REIVs) as defined in Article 2(1)(17) of the Act.

An entity qualifies as a REIV if all of the following conditions are met:

1. it has a diversified ownership structure;
2. real estate constitutes at least 50% of their assets value (owned directly or indirectly);
3. its income is subject to income tax - either at the level of the entity itself or its investors, with a deferral period not exceeding one year.

The exclusion applies only to the Ultimate Parent Entity (UPE). This means that a REIV located lower in the Group structure will, as a rule, remain subject to the GloBE[11] framework in the same way as other constituent entities (Article 5(2)(6) of the Act).

The exclusion gives rise to three main practical implications:

1. No application of IIR – excluded entities are not subject to the Income Inclusion Rule. The obligation shifts to the next entity in the ownership chain, provided that it is not itself excluded.
2. Exclusion from calculations – the profits, losses, taxes, and other attributes of excluded entities are not taken into account in the GloBE calculations, except for the purpose of determining whether the Group meets the minimum revenue threshold for the regime.
3. No reporting obligations – excluded entities are not subject to administrative requirements under the GloBE rules (e.g. submission of the GloBE Information Return).

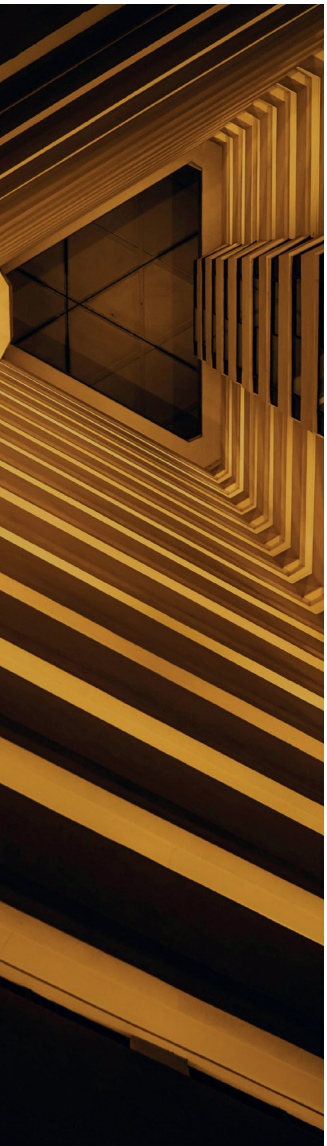
Commentary

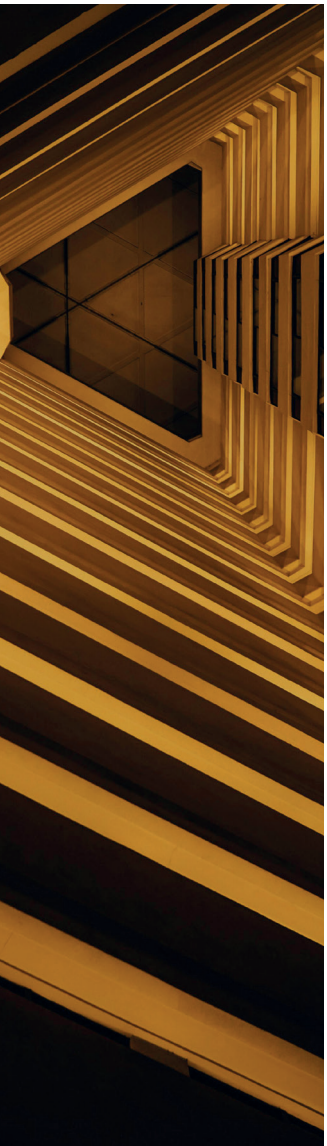
In practice, only a limited number of Polish entities will act as the Ultimate Parent Entity (UPE). Nevertheless, the REIV exclusion may have a significant impact on other constituent entities within the Group.

In particular, where a Polish entity is positioned directly below an excluded entity within the Group structure, it may assume obligations related to the application of the Income Inclusion Rule (IIR).

Additionally, the exclusion of the UPE may result in the need for other entities within the Group to calculate top-up tax under the Undertaxed Payments Rule (UTPR).

11 „GloBE rules" refers to the set of standards governing the international top-up taxation system, developed at the OECD level and implemented by the individual jurisdictions.





2.5. Transitional safe harbours (CbCR)

Constituent entities of Groups, located in Poland may benefit from so-called transitional safe harbours (calculated based on data used for Country-by-Country Reporting (CbCR) purposes). This allows for a reduction in compliance obligations in the initial phase of the global minimum tax regime.

The decision to apply transitional safe harbours must be made for the first year in which the Group is subject to the global minimum tax.

In line with the "once-out, always-out" principle, the decision to apply transitional safe harbours in a given jurisdiction can be made only in the first fiscal year and must then be consistently applied in subsequent years.

Currently, the transitional safe harbours apply to fiscal years beginning no later than 31 December 2026 and ending no later than 30 June 2028. For Groups with calendar fiscal years, this effectively allows the use of these simplifications for the period 2024–2026.

Commentary

The Ministry of Finance is currently working on a draft amendment to the Act, which envisages changes concerning the transitional safe harbour rules[12].

It is planned to further clarify the "once-out, always-out" principle. Following the amendment, Groups that did not designate Poland as a jurisdiction covered by the transitional safe harbour for 2024 will not be able to make such an election for 2025.

The draft also proposes a revision of the definition of the "first fiscal year", which could allow taxpayers to benefit from simplifications applicable to the first year only after the transitional safe harbour period has ended.

In addition, consideration is being given to extending the application of the transitional safe harbour rules to the 2027 fiscal year.

2.6. Side-by-side agreement

Under an arrangement developed within the OECD framework between jurisdictions that have actively implemented the global minimum tax mechanism and the U.S. administration (the Side-by-side agreement; hereinafter: the Agreement), a mechanism has been agreed to allow for the coexistence of U.S. minimum taxes with the GloBE regime.

The Agreement envisages the introduction of a safe harbour whereby the Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UTPR) do not apply to constituent entities of a Group whose Ultimate Parent Entity (UPE) is located in the United States.

At the same time, this solution does not restrict the application of the Qualified Domestic Minimum Top-up Tax (QDMTT) in jurisdictions where the Group operates - domestic top-up taxes may still be levied at the level of individual countries in which the Group's constituent entities are located.

The Agreement is intended to apply to fiscal years beginning on or after 1 January 2026.

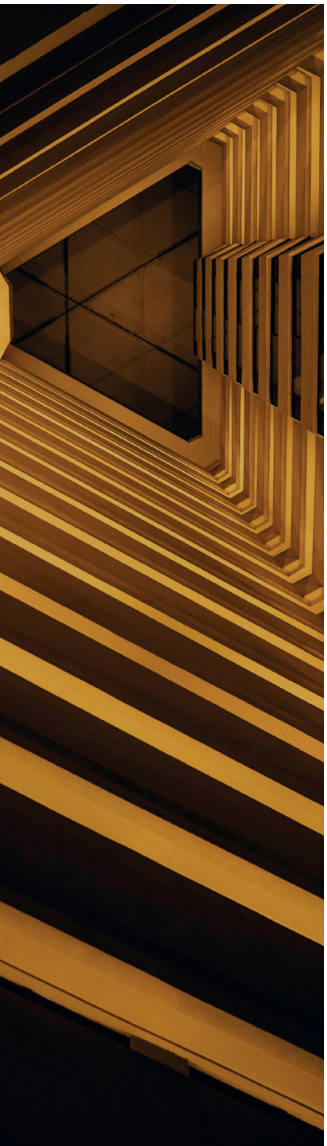
12 Draft amending the Act on the TopUp Taxation of Constituent Entities of International and Domestic Groups and certain other acts, created on 13 February 2026 under reference number UC90, published on the website of the Government Legislation Centre (RCL).

Commentary

The draft amendment to the Act currently under preparation does not provide for the implementation of the safe harbour arising from the Agreement. However, pursuant to Article 32 of Directive 2022/2523, Poland will be required to implement this solution.

Only once the relevant amendments to the Act - introducing the safe harbour provided for under the Agreement - enter into force, will Polish constituent entities belonging to Groups whose Ultimate Parent Entity (UPE) is located in the United States - be relieved from potential obligations relating to the application of the Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UTPR).

The practical aspects of reporting and documentation for Groups benefiting from the safe harbour under the Agreement have not yet been clarified.



3. Review of the case law and tax rulings from December 2025 and the first half of 2026

3.1. Permanent establishment for VAT purposes in the context of mandatory KSeF – tax explanatory notes

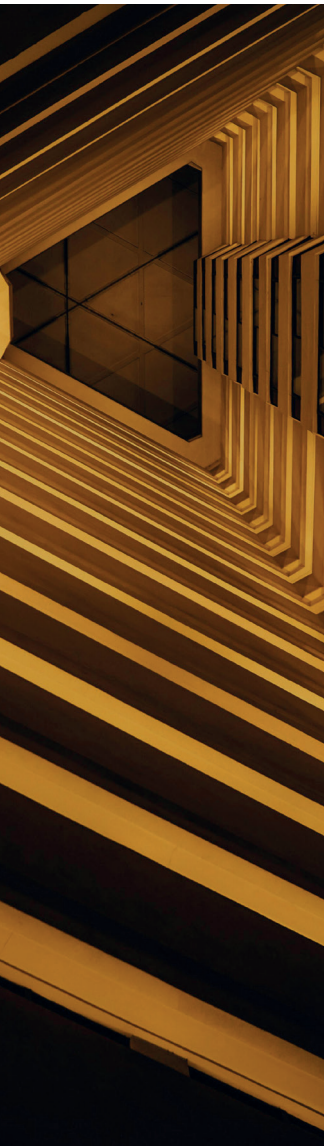
The tax explanatory notes issued on 28 January 2026 regarding the determination of a fixed establishment for VAT purposes (hereinafter: FE) in Poland for the purpose of invoicing within the KSeF system (the FE Explanatory Notes) form part of a broader trend aimed at tightening and structuring VAT settlements in cross-border transactions. Their relevance is particularly evident in the real estate sector, which operates at the intersection of large international structures, local assets, and long-term economic presence within a given jurisdiction.

Mandatory KSeF and explanatory notes create a new, more formalized framework for foreign taxpayers in Poland.

In the real estate sector, the risk of creating an FE arises particularly frequently. This applies, among others, to foreign investment funds, special purpose vehicles (SPVs), operators of commercial properties, and entities managing long-term leases. The FE Explanatory Notes strengthen a functional approach, under which the existence of an FE is determined not so much by the legal structure as by the actual ability to conduct business activities in Poland.

In the real estate context, particular attention should therefore be paid to:

- the continuous availability of the technical infrastructure (property, facilities, offices);
- the use of local management teams (internal or outsourced);
- the taxpayer's actual influence over key processes, such as leasing, contract negotiations, property management, and settlements with tenants.



In practice, even a model based on the outsourced property management may be considered as giving rise to an FE, if the foreign taxpayer retains significant decision-making powers and continuity of operations in Poland.

Commentary

In the light of the above, KSeF plays a significantly broader role in the real estate sector than that of a purely technical invoicing system. The data collected within KSeF - such as the frequency of invoicing, the place where invoices are issued, the identification of entities as issuers or recipients, and the nature of documented transactions - provides tax authorities with a consistent and structured view of a taxpayer's activities in Poland.

For entities in the real estate sector, this means that:

regular invoicing of rent, utilities, maintenance services, or recharged costs through KSeF may support the conclusion that activities are ongoing and continuous

centralized reporting of transactions limits the ability to rely on a fragmented operating model, under which the absence of an FE could previously be more easily argued

KSeF strengthens the evidentiary basis of analyses conducted by tax authorities, particularly when combined with the activities of specialized tax offices handling international taxpayers.

3.2. Property tax treatment of container units – General Interpretation of the Minister of Finance and Economy of 2 January 2026 (ref. DPL2.8401.6.2025)

The Minister of Finance and Economy clarified how the concept of "permanent attachment to the land" should be interpreted, effective from 1 January 2025, when classifying container units as structures for property tax purposes.

The mere placement of a container on the ground, paving blocks, concrete foundations, or slabs does not, in itself, constitute permanent attachment to the land. The decisive factor is the physical connection of the object to the land or to a base attached to the land, for example through anchoring, bolting, or other forms of technical fixation ensuring stability and resistance to external factors.

As a result, typical portable containers - such as storage units, office containers, sanitary units, security booths, or staff facilities - that are not physically attached to the ground do not qualify as structures listed in Annex 4 to the Act on Local Taxes and Charges and are therefore not subject to real estate tax as structures.

Commentary

The method of installation is of key importance. Where a container can be relocated without dismantling any fixing elements and its stability results solely from its weight or design, it should generally not be treated as a structure for real estate tax purposes.

At the same time, the interpretation does not fully exclude the taxation of containers. Where a specific unit is anchored, bolted, or otherwise physically attached to the ground or to a base connected to the land, it may meet the criterion of the permanent attachment and be subject to taxation as a structure.

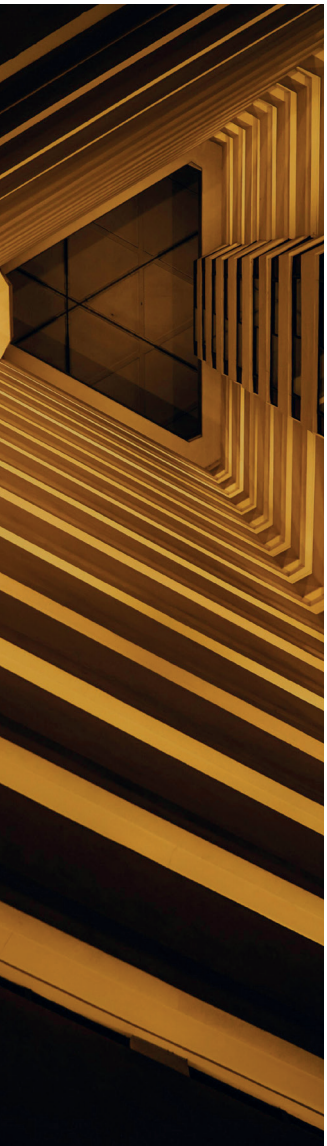
In practice, taxpayers should therefore review not only the type of container but, above all, the technical documentation and actual method of installation, as these factors will determine its classification for property tax purposes.

3.3. Timing of the right to deduct VAT – judgment of the General Court of the European Union of 11 February 2026 (case T-689/24)

The General Court of the European Union (General Court) held that Polish regulations cannot deprive a taxpayer of the right to deduct VAT in the return for the period in which the substantive right to deduction arose, where the taxpayer received the invoice after the end of that period but before submitting the VAT return.

The case concerned a Polish taxpayer purchasing gas and electricity. Invoices documenting purchases made in a given reporting period were received in the subsequent period, but before the submission of the VAT return for the period in which the tax became chargeable. The tax authority claimed that the deduction could only be made in the period in which the invoice was received. The General Court did not share this position.

The Court indicated that holding an invoice constitutes a formal condition for exercising the right to deduct, but not a substantive condition for the existence of that right. Therefore, where a taxpayer has met the substantive requirements and holds the invoice at the time of filing the return, the VAT should be deductible in the return for the period in which the tax became chargeable.



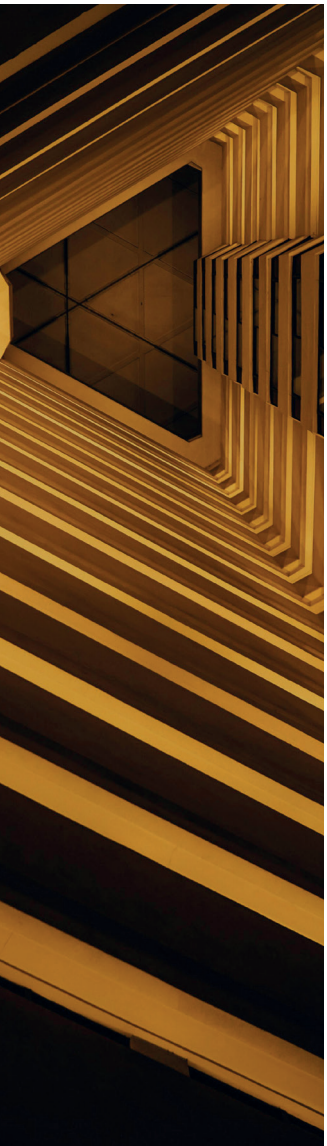
Commentary

This judgment may have significant practical implications for Polish taxpayers, particularly in situations where invoices for supplies of goods or services are frequently received after the end of a reporting period but before the deadline for filing the VAT return.

The General Court emphasized that the right to deduct VAT is a fundamental element of the VAT system and should, in principle, be exercised without delay. Deferring the deduction to a subsequent period, despite the taxpayer holding the invoice before filing the return, is contrary to the principles of VAT neutrality and proportionality.

In practice, the judgment may call into question the existing approach under Article 86(10b)(1) of the VAT Act, pursuant to which the right to deduct arises no earlier than in the period in which the invoice is received. Taxpayers may gain an argument for earlier VAT deduction where the invoice is received before filing the return for the period in which the substantive conditions for deduction were met.

At the same time, it should be noted that the judgment has been challenged by the First Advocate General of the Court of Justice of the European Union (CJEU), who has requested that the case be reviewed under the “exceptional review procedure” (case C167/26 RX). This means that the judgment will be subject to further review by the Court of Justice.



3.4. Notarial deed as a substitute for an invoice for VAT deduction purposes – judgment of the Supreme Administrative Court of 13 February 2026 (case I FSK 949/23)

The case reviewed by the Supreme Administrative Court (SAC) concerned whether a notarial deed may constitute sufficient documentation to exercise the right to deduct VAT, despite not qualifying as an invoice within the meaning of the VAT Act. The taxpayer carried out a real estate transaction, and the only document evidencing the transaction was a notarial deed containing all the information necessary to determine the taxable amount, the applicable VAT rate, and the amount of tax. The tax authorities denied the right to deduct VAT on the grounds that the taxpayer did not hold an invoice.

The SAC did not share the authorities' position. The Court emphasized that the right to deduct VAT is a substantive right and cannot be made conditional solely upon meeting formal requirements where the transaction has been carried out and is subject to taxation. The SAC indicated that a notarial deed may serve as a document equivalent to an invoice, provided it contains all the data necessary to determine the amount of VAT and confirms that the transaction has been effectively performed.

The Court referred to the principle of VAT neutrality and to CJEU case law, according to which the absence of an invoice cannot automatically deprive a taxpayer of the right to deduct, where the substantive conditions of the transaction are fulfilled.

Accordingly, the judgment confirms that a notarial deed may constitute a valid basis for VAT deduction, and that denial of such right solely due to the lack of an invoice is not justified.

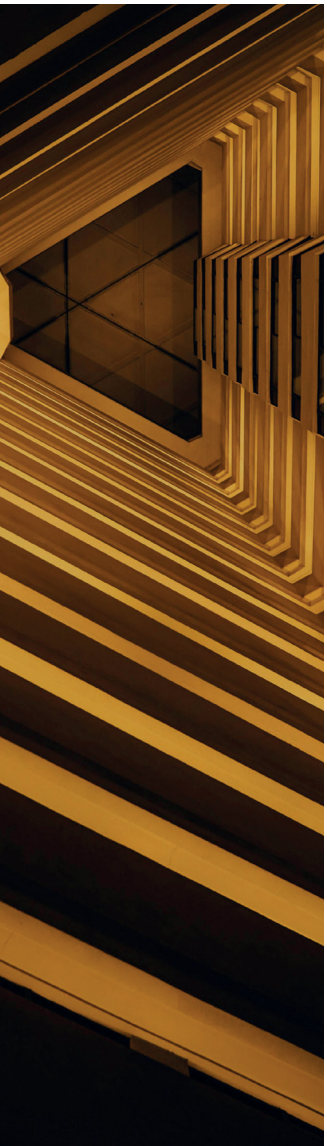
Commentary

The SAC judgment is of significant practical importance, particularly in the context of increasing formalization in invoicing requirements and the implementation of KSeF. The Court reaffirmed that the cornerstone of the VAT system is the principle of neutrality, meaning that taxpayers should not bear negative consequences solely due to formal shortcomings where the transaction is genuine and subject to VAT.

This ruling strengthens the position of taxpayers in situations where, for objective reasons, they do not possess an invoice but hold another document evidencing the transaction, such as a notarial deed.

The judgment is of particular relevance for real estate transactions, where notarial deeds often contain all the information necessary for VAT settlement. The SAC confirmed that, in such cases, issuing an additional invoice is not required, thereby reducing the risk of disputes with the tax authorities.

At the same time, the ruling sends an important signal to the tax administration that formal requirements should not prevail over the assessment of the substance of transactions, which is particularly relevant during the implementation phase of KSeF, when the risk of technical and procedural errors is elevated.



3.5. Dividend exemption without the beneficial owner requirement – judgment of the Supreme Administrative Court of 3 February 2026 (case II FSK 674/25)

The Supreme Administrative Court (SAC) confirmed that the application of the withholding tax exemption on dividends under Article 22(4) of the CIT Act is not conditional upon the recipient holding beneficial owner status.

At the same time, the SAC emphasized that in cases where a structure is artificial or has been established primarily to obtain a tax benefit, Article 22c of the CIT Act - i.e. the so-called anti-abuse rule - will apply, effectively excluding the possibility of applying the exemption.

Commentary

The Court clearly highlighted the importance of anti-abuse mechanisms. In practice, this means a shift in focus from the formal fulfilment of exemption criteria to the assessment of the substance of the structure and its underlying business rationale.

In other words, the absence of a beneficial owner requirement does not imply automatic application of the exemption - what becomes critical is demonstrating that the holding structure is not artificial in nature.

This judgment should be approached with caution, particularly in light of the existing WHT Explanatory Notes, which explicitly require verification of beneficial owner status also in the context of dividend payments. This divergence may lead to further disputes between taxpayers and tax authorities.

3.6. Broad interpretation of “industrial equipment” – judgment of the Supreme Administrative Court of 5 December 2025 (case II FSK 317/23)

The Supreme Administrative Court (SAC) held that the concept of “industrial equipment”, as used in the context of withholding tax (WHT) provisions, should be interpreted broadly and not limited solely to traditional manufacturing machinery.

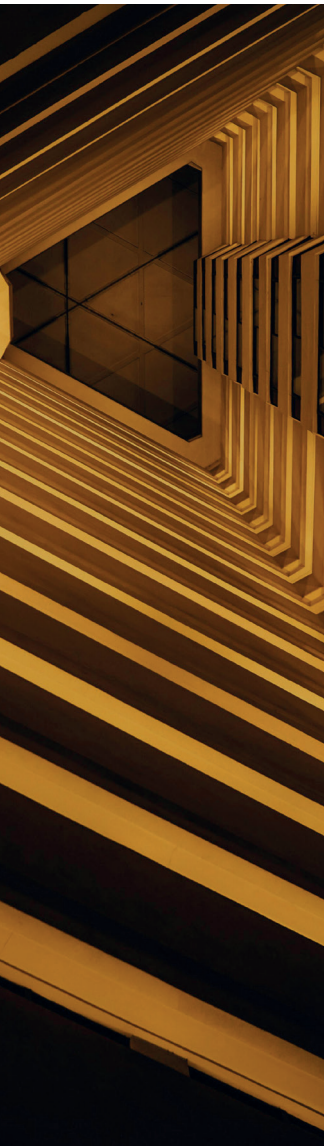
The Court indicated that servers, as devices used for storing and processing data, may qualify as industrial equipment within the meaning of both the CIT Act and applicable double tax treaties (DTTs). As a result, payments for the use of server infrastructure may be subject to withholding tax.

Commentary

This judgment is consistent with the evolving position of administrative courts and tax authorities, which increasingly favour a broad interpretation of the concept of “industrial equipment” for WHT purposes.

Under the current approach adopted by the SAC, the concept should be understood in a functional manner, rather than being limited to traditional equipment used in manufacturing activities. In practice, this means that WHT exposure may arise not only in relation to server infrastructure or cloud services, but also, in certain cases, in relation to software-as-a-service (SaaS) arrangements provided on a subscription basis.

This approach significantly broadens the potential scope of WHT taxation and reflects the changing nature of business models in the digital economy.



3.7. Standing to apply for a clearance opinion – judgment of the Voivodship Administrative Court in Lublin of 18 February 2026 (case I SA/Lu 341/25)

The Voivodship Administrative Court (VAC) in Lublin set aside a refusal to issue a clearance opinion on the application of withholding tax (WHT) preferences, indicating that the authority should first verify whether the application was submitted by an entitled entity.

The Court recalled that, pursuant to Article 26b(1) of the CIT Act, an application for a clearance opinion may be submitted exclusively by the taxpayer, the withholding agent, or an entity making payments through securities accounts or omnibus accounts.

In the case at hand, the application was filed by a foreign company claiming to be the beneficial owner of interest paid within a group financing structure. However, the Court concluded that, since the company did not receive the interest directly from the Polish withholding agent, it did not qualify as a taxpayer in respect of those payments.

As a consequence, the authority should have refused to initiate proceedings under Article 165a § 1 of the Tax Ordinance Act, rather than proceeding with a substantive assessment of the eligibility for WHT preferences.

As of the report's publication date, the judgment is not yet final.

Commentary

The judgment is of significant practical importance for entities seeking clearance opinions in the context of group financing structures and models based on the look-through approach.

The VAC emphasized the formal nature of the procedure under Article 26b of the CIT Act. Where an application is submitted by an unauthorized entity, the authority should not assess the substantive conditions, including the status of the beneficial owner.

In practice, this highlights the need for careful identification of the entity entitled to submit the application. The mere status of an economic beneficiary of the payments may prove insufficient if the entity does not qualify as a taxpayer or withholding agent within the meaning of Article 26b(1) of the CIT Act.

3.8. Permanent establishment in construction projects – judgment of the Voivodship Administrative Court in Gliwice of 19 February 2026 (case I SA/Gl 594/25)

The VAC in Gliwice set aside an interpretation concerning the timing for the payment of the first corporate income tax (CIT) advance and the submission of the first CIT-8 return by a foreign entity that had created a permanent establishment (PE) in Poland in the form of a construction site.

The case concerned a Czech company carrying out a construction and installation project in Poland. The works commenced on 3 November 2023 and exceeded 12 months, resulting in the creation of a permanent establishment in Poland under the Polish - Czech double tax treaty (DTT).

The Court held that the first CIT advance payment should be made only for the month in which the 12-month period of activity elapsed, i.e. by

20 December 2024. This advance should cover the income of the permanent establishment from the commencement of the works until the end of the month, in which the 12-month threshold was exceeded.

Similarly, the first CIT-8 return should cover the period from the start of the works in Poland (i.e. from 3 November 2023) until the end of the tax year, i.e. 31 December 2024.

As of the report's publication date, the judgment is not yet final.

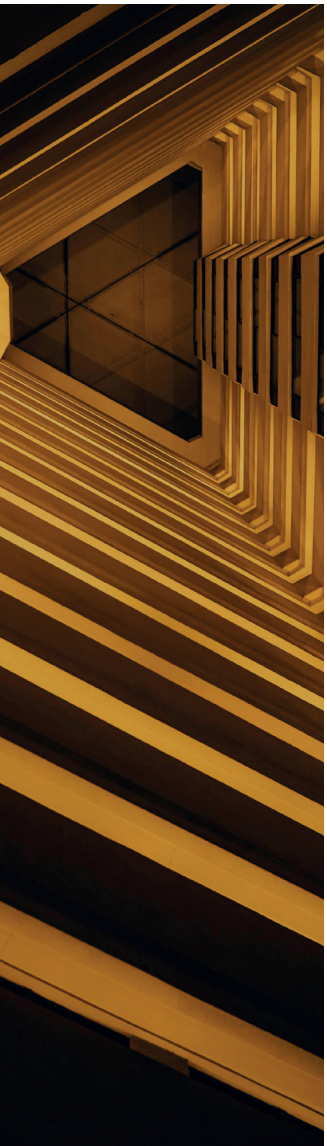
Commentary

The judgment is of significant importance for foreign contractors carrying out construction, installation, or assembly projects in Poland. The VAC confirmed that, although a permanent establishment is deemed to exist from the beginning of the project once the 12-month threshold is exceeded, this does not automatically result in tax arrears for earlier months.

The Court correctly pointed out that prior to the expiry of the 12-month period, the foreign contractor does not yet have a limited tax liability in Poland through a permanent establishment. Accordingly, there is no basis for requiring earlier payment of advances or charging interest for a period in which no tax obligation existed.

The approach previously adopted by the tax authority would have led to an unreasonable outcome: the taxpayer would have been required to pay interest on advance payments that it had no legal basis to make before the permanent establishment was created.

The judgment therefore reinforces the practical importance of systematic and functional interpretation in cases concerning construction-related permanent establishments.



3.9. Taxation of remuneration of foreign employees working in Poland – tax obligations and the role of a permanent establishment – Individual interpretation of the Director of the National Tax Information of 23 December 2025 (ref. 0115-KDIT2.4011.540.2025.1.MM)

A Spanish national, who is a tax resident of Spain, was seconded to work in Poland by his foreign employer, which does not have a permanent establishment (PE) in Poland. Although the remuneration was formally paid by the Spanish entity, the work was performed for a German company operating in Poland through a branch, which bore the economic cost of the remuneration.

The tax authority concluded that, in such circumstances, the remuneration is subject to taxation in Poland, regardless of the duration of the employee's stay, as it is economically borne by an entity operating in Poland. The obligation to account for advance tax payments rests with the employee.

Commentary

The position adopted by the tax authority aligns with the established interpretative approach concerning the concept of the "economic employer". The key factor is not the formal employment relationship, but which entity effectively benefits from the work performed and bears the associated economic risk.

Since the remuneration is allocated to the Polish branch and the cost is borne at that level, the condition that the income is "borne by a permanent establishment" in Poland is met. In practice, this precludes the application of the "183-day rule".

3.10. Right to deduct VAT from invoices issued outside KSeF – individual interpretation of the Director of the National Tax Information of 2 January 2026 (ref. 0111-KDIB3-1.4012.857.2025.1.MSO)

The Director of the National Tax Information confirmed that a purchaser retains the right to deduct VAT from a purchase invoice issued outside the KSeF system, even where the supplier, contrary to its obligation, should have issued a structured invoice.

The authority indicated that issuing an invoice outside KSeF is not listed in Article 88 of the VAT Act as a negative condition that would eliminate the right to deduct VAT. Accordingly, the standard conditions for deduction remain key, namely: the status of an active VAT taxpayer, the link between the purchase and taxable activities, the genuine nature of the transaction, and the absence of other negative conditions.

Commentary

This interpretation is of significant practical importance in the context of the implementation of mandatory KSeF. It confirms that a breach of obligation to issue a structured invoice generally lies with the supplier and should not automatically deprive the purchaser of the right to deduct VAT.

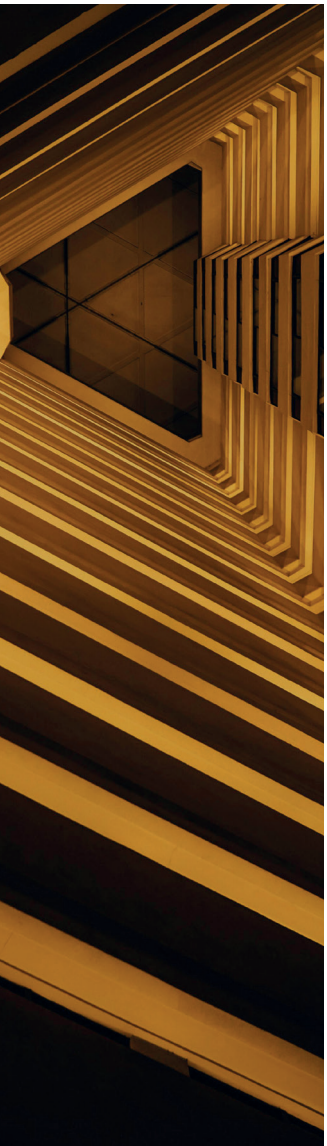
The authority's approach is consistent with the principle of VAT neutrality and with established case law emphasising the primacy of the substance of transactions over formal deficiencies. In practice, this means that an invoice issued outside KSeF may still constitute a valid basis for VAT deduction, provided that it documents a genuine taxable transaction.

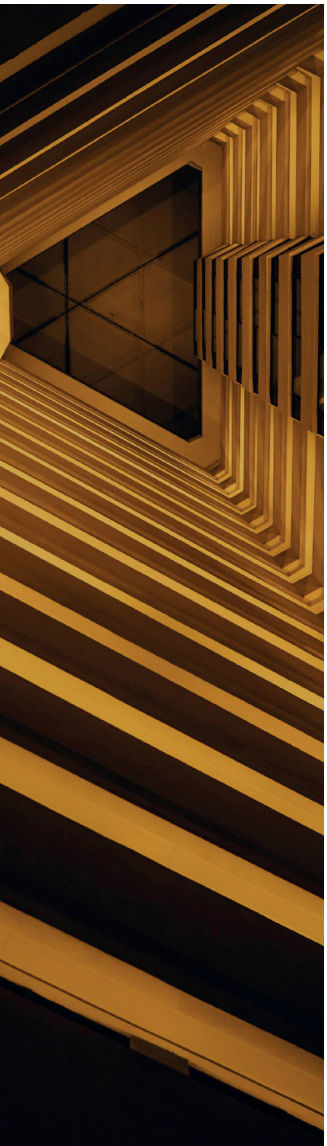
At the same time, taxpayers should exercise appropriate evidentiary caution. Where an invoice is received outside KSeF, it is advisable to document the circumstances of its receipt, verify the supplier's status, and confirm the economic substance of the transaction - particularly during the initial period of mandatory KSeF implementation.

3.11. Sale of real estate and the right to deduct input VAT on acquisition – individual interpretation of the Director of the National Tax Information of 16 February 2026 (ref. 0111-KDIB3-3.4012.712.2025.3.AW)

The Director of the National Tax Information confirmed that the sale of commercial real estate (even together with lease agreements) generally does not constitute the transfer of an enterprise or an organized part thereof (ZCP), where the scope of the transaction is limited to standard "real estate" elements.

In particular, the absence of the transfer of elements such as financing arrangements, management agreements, cash, receivables, liabilities, or operational infrastructure indicates a lack of functional and organizational separation.





As a result, such a transaction qualifies as a supply of goods subject to VAT, rather than a transaction excluded under Article 6 of the VAT Act. At the same time, in the case analyzed, the supply of buildings and structures (generally following first occupation and after the lapse of two years) benefits from a VAT exemption. However, the parties may opt out of this exemption and choose taxation, in which case the entire transaction may be subject to VAT. In such circumstances, the purchaser is entitled to deduct input VAT and may be eligible for a VAT refund.

Commentary

This interpretation confirms an established and increasingly consistent practice, according to which real estate alone - even if it generates rental income - does not constitute a ZCP, unless it is accompanied by a full operational infrastructure enabling the continuation of activities without additional actions by the purchaser. Tax authorities consistently refer to the criterion of the "ability to operate independently", as well as to the Ministry of Finance's explanatory notes of 11 December 2018 on the VAT treatment of commercial real estate transactions.

From a practical perspective, this means that the vast majority of asset deal transactions in the real estate sector will be treated as subject to VAT. While this eliminates the application of transfer tax (PCC), it requires proper transaction structuring (e.g. submission of a joint statement to opt out of the VAT exemption).

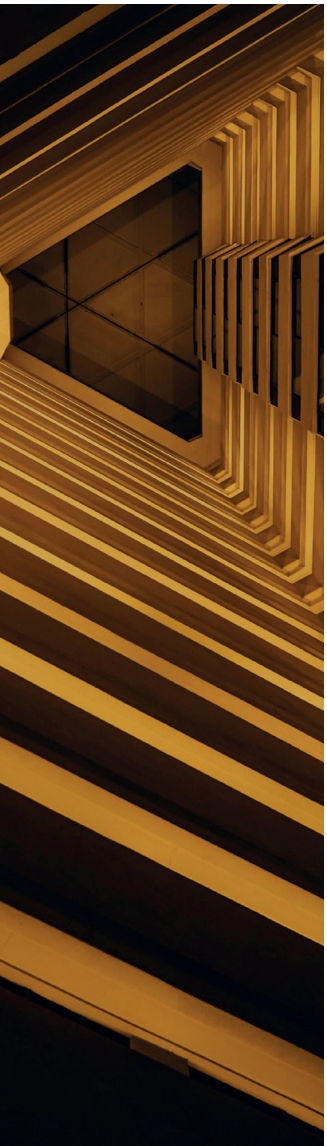
The key consideration remains the careful structuring of the transaction scope - in particular, the deliberate exclusion of operational elements - and the consistent documentation of the absence of organizational, financial, and functional parts of an enterprise.

3.12. Sale of undeveloped land: VAT treatment and proper documentation of the transaction – individual interpretation of the Director of the National Tax Information of 24 March 2026 (ref. 0114-KDIP1-1.4012.35.2026.4.KOM)

This interpretation concerned the tax treatment of the sale of two undeveloped land plots by an individual who is a registered VAT taxpayer conducting business activities involving the lease and rental of real estate. The plots were used in business activity and were to be sold to a company planning a commercial development project.

The purchasing company was granted broad powers of attorney to conduct administrative proceedings related to the investment, including obtaining zoning decisions. Although the plots were not covered by a local zoning plan, at the time of the sale they were subject to a zoning decision issued at the request of the purchaser.

The tax authority concluded that the sale of the plots is subject to VAT, as they were used in business activities, and the zoning decision qualifies them as building land. Consequently, the exemption provided under Article 43(1)(9) of the VAT Act does not apply. The authority also confirmed the obligation to document the transaction with a VAT invoice.



Commentary

The interpretation confirms the established approach of tax authorities: the existence of a zoning decision determines the classification of land as building land, thereby excluding the possibility of applying the exemption under Article 43(1)(9) of the VAT Act. It is irrelevant that the zoning decision was obtained by the purchaser - the decisive factor is the legal status of the land at the time of sale.

It is also significant that the plots were used in business activities, which further supports the conclusion that the transaction should be subject to VAT. In practice, sales of undeveloped land in such circumstances will almost always be treated as taxable transactions.

The interpretation also reiterates that transactions between VAT taxpayers must be documented by a VAT invoice, regardless of whether the subject of the transaction is land, buildings, or other assets. For the purchaser, this ensures the possibility of deducting VAT, provided that the land will be used for taxable activities.

3.13. Bad debt relief in VAT for sales to foreign counterparties – individual interpretation of the Director of the National Tax Information of 3 March 2026 (ref. 0114-KDIP4-2.4012.18.2026.1.AA)

The Director of the National Tax Information confirmed that a Polish taxpayer may apply bad debt relief in VAT with respect to unpaid invoices documenting domestic fuel sales to foreign business counterparties.

The authority concluded that the absence of the counterparties' registration as active VAT taxpayers in Poland does not preclude the right to adjust the taxable base and output VAT under Article 89a of the VAT Act. The key conditions remain that the creditor is an active VAT taxpayer, the receivable has not been settled or transferred within 90 days of the payment due date, and no more than three years have elapsed from the end of the year in which the invoice was issued.

The authority also confirmed that Article 89a(2a) of the VAT Act, which provides for additional requirements in transactions involving entities other than active VAT taxpayers, does not apply to foreign business counterparties that are not consumers.

Commentary

The interpretation is favourable for taxpayers making domestic supplies to foreign entrepreneurs who are not registered for VAT in Poland. It confirms that, following the amendments effective from 1 October 2021, the debtor's status as a Polish active VAT taxpayer is no longer a condition for applying bad debt relief.

In practice, it is crucial to properly document that the debtor qualifies as a business entity, that the receivable has not been settled or assigned, and that the adjustment is made within the three-year limitation period calculated from the end of the year in which the invoice was issued.

The fact that payment was to be made, for technical reasons, to the account of a related entity does not, in itself, preclude the right to make the adjustment, provided that the Polish supplier remains the creditor.

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