

# THE RIGHT FOCUS

**MAY 2023**



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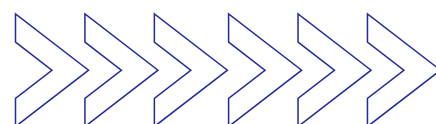
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# TO ALL BUSINESSPEOPLE: THE DEADLINE FOR APPROVAL OF THE FINANCIAL STATEMENTS IS APPROACHING!



 ADAM  
CZARNOTA

In previous years (2021 and 2022), due to the COVID-19 pandemic, the deadlines for financial reporting were extended by regulations of the Minister of Finance.

For example, the deadline for the approval of financial statements was extended by three months and expired on 30 September of the relevant calendar year.

## 2023 - has the deadline for submission of financial statements been extended?

This year, due to the diminishing impact of the pandemic, a similar solution has not been applied. Therefore, the deadlines in effect prior to the COVID-19 outbreak will apply, i.e.:

- 31 March 2023 - preparation of financial statements for the financial year 2022
- 30 June 2023 - approval of financial statements
- 15 July 2023 - filing of financial statements with the competent court registry via an online financial document repository

It is important to note that the above deadlines apply when an entity's financial year coincides with the calendar year.

## Approval of financial statements for 2023

Depending on the legal form of the business, different corporate bodies will be empowered to approve the financial statements. Taking the example of a limited liability company, the relevant resolution will need to be adopted by the shareholders' meeting before the deadline. The approval of the financial statements is important, as failure to comply with the formalities in this respect will prevent the distribution of the profit earned in a given financial year.

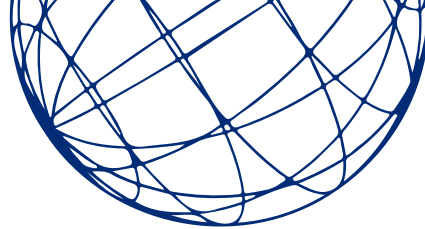
## Sanctions for non-compliance with reporting obligations

Importantly from the point of view of businesses, there are a number of sanctions for the failure to timely fulfil financial reporting obligations. These include, without limitation:

- The possibility of the registration court ex officio initiating the so-called coercive procedure, during which individuals responsible for submitting approved financial statements are requested to submit the outstanding financial documents subject to a fine (which may be repeated if the documents are not submitted despite the request).
- A fine or restriction of personal liberty as provided for in the Accounting Act for failure to submit financial statements.

Owners of capital companies should also remember that if financial statements for two consecutive financial years are not submitted despite a request from the registration court, the court will ex officio initiate proceedings to dissolve the company without liquidation.





# NEW SUPREME COURT RESOLUTION ARE WE FACING A SLOWDOWN IN THE OPERATION OF THE PUBLIC PROCUREMENT COURT?



 DR JAKUB  
KRYSA



 MICHAŁ  
WARAKSA

On 26 April 2023, the Labour Chamber of the Supreme Court issued a resolution stating that the hearing of a civil case by a single judge in a court of second instance as allowed under the so-called Anti-Covid Act, restricts the right to a fair trial, as it is not necessary for the protection of public health, and will render the proceedings invalid.

The resolution has the force of a legal rule and is effective from the date of its adoption.

## What should be the composition of the court of second instance?

In accordance with the Code of Civil Procedure, in appeal proceedings, cases are heard by a panel of three judges. An exception to this rule was only established by the Anti-Covid Act, which – due to the threats posed by the pandemic – allowed for single judges to hear cases.

## Supreme Court resolution and the public procurement market

Apparently, the Supreme Court's resolution might seem to have no particular relevance to the public procurement market.

This is because the Public Procurement Law has established a separate institution which examines disputes arising in the context of public procurement procedures, namely the National Appeal Chamber (Krajowa Izba Odwoławcza, KIO).

However, judgments rendered by the National Appeal Chamber may be appealed to the Public Procurement Court, i.e. the Regional Court in Warsaw, which applies the provisions of the Code of Civil Procedure on appeals and thus, also those concerning the composition of the court. In other words, the rule here is a panel of three judges.

## Consequences of the new Supreme Court resolution

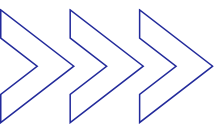
At present, it is difficult to clearly foresee the effects of the new resolution of the Supreme Court.

According to publicly available information, the Regional Court in Warsaw (and therefore also the 23rd Commercial Appeals and Public Procurement Division, which handles appeals) intends to comply with the resolution.

The immediate consequence of this decision has been the cancellation of some scheduled hearings and the addition of judges to adjudicating panels. In the future, this may also mean that appeal proceedings will be lengthened.

## How do we assist in proceedings before the Public Procurement Court?

- Review documents relating to public contract procedures and appeal proceedings before the National Appeal Chamber
- Analyse the grounds of lodging an appeal against decisions of the National Appeal Chamber
- Draft appeals against decisions of the National Appeal Chamber or replies to appeals, and represent parties before the Public Procurement Court



# INFORMATION WORTH MORE THAN GOLD

## A FEW WORDS ABOUT NDAS



 PAWEŁ  
MARDAS

Time is money.  
Information is also  
money, and access to  
information can save  
a lot of time and  
costs.

This is evident in every  
M&A transaction.

### Non-disclosure agreement or NDA in practice

One of the first actions taken in virtually every transaction is to conclude a confidentiality agreement between the parties.

Usually, the scope of confidential information includes all data relating to the proposed transaction and the parties involved, including information on the status of ongoing negotiations.

The confidentiality obligation may take the form of a separate agreement - a non-disclosure agreement (NDA). It can also be incorporated into another document, such as a term sheet or preliminary agreement.

Normally, an NDA sets out how confidential information is to be protected. It also includes an obligation to return documents containing such information should the transaction not be effected.

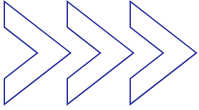
Alternatively, an NDA may oblige the party receiving confidential data to delete it (as not every document can be easily returned, such as for example email communications).

### Financial penalties in NDAs

The confidentiality obligation may also be secured by a contractual penalty, i.e. an obligation to pay a certain amount in the event of a breach by the recipient of the information.

The contractual penalty clause facilitates the enforcement of the penalty, as the party in whose favour the penalty is stipulated does not have to prove the value of the damage suffered as a result of the breach of the NDA.





## Permitted use of information, or what not to forget in an NDA

An often overlooked, yet equally important element of an NDA, is the clause defining the permitted use of information by the recipient.

The idea is to secure that confidential information will only be used to assess the viability, negotiate the terms and conditions of and then execute the transaction.

In that case, confidential information may not be used for any other purpose, in particular for competing activities. Indeed, we can imagine a case where a buyer, who is a strategic industry investor, obtains information from a seller operating in the same market segment and thus being the buyer's direct competitor.

The buyer has obtained confidential information, but the transaction does not take place.

Another example. A transaction is carried out via an auction in which several competing buyers make their bid to acquire another company operating in the same industry. Naturally, the seller may choose only one of them.

Those whose bids have been rejected still had access to confidential information, as each of them was invited to the auction process in which they made a due diligence investigation of the company being sold.

## High risk for technology and innovation-based companies

In a situation where the buyer does not proceed to close the deal, either because he withdraws himself or his offer is rejected, the risk of confidential information being used for a purpose other than originally intended seems particularly significant.

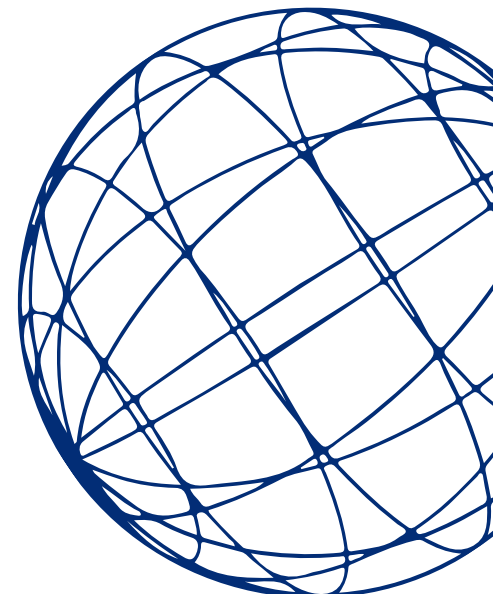
This is particularly true for those business sectors and activities that rely on new technologies and other innovative solutions.

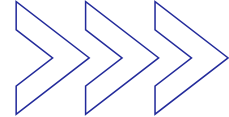
Indeed, in the rapidly changing market of products and services based on innovative concepts that require special protection against disclosure, access to non-public technological information can be crucial to the success or failure of an entire business project.

## How we help protect important information

We help our Clients to protect themselves against disclosing their important information, but also to secure the data they share against unauthorised use.

We also know how to effectively counter attempts to build unfair competitive advantage based on the information that Clients choose to share in M&A transactions. Because we know that information is money, so there are many people eager to get it.





# UNITARY PATENT & UNIFIED PATENT COURT

## A REVOLUTION IN PATENT PROTECTION



 **TOMASZ  
SZAMBELAN**

After years of discussion and preparation, the EU's unitary patent system is becoming a reality and is expected to start on 1 June 2023.

This is a real revolution in patent protection in the European Union, as with the entry into force of the unitary system, the Unified Patent Court will also commence its activities.

### The current system - the 'classic' European patent

Today, those wishing to obtain protection for their solutions file a request for a European patent with the European Patent Office (EPO), which verifies whether the invention described in the application meets the conditions for granting a patent.

In order to obtain protection in the countries that have acceded to the European Patent Convention, a patent must additionally undergo a validation procedure at the national patent office. This involves the submission of additional translations and, for some countries, the payment of an additional fee.

Once this procedure is complete, a European patent has exactly the same effects as a patent granted by a national patent office in the relevant territory.

### A single patent for all countries

On 1 June this year, the unitary patent system will become operational, which means that from that date it will be possible for European patents to be registered by the EPO with unitary effect, being exerted automatically across the 17 EU Member States that have signed the Agreement on a Unified Patent Court.

Countries currently participating in the unitary patent system are: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, and Sweden.

Poland is not part of this system, which means that holders of European patents, both the 'classic' patent and the European patent with unitary effect, wishing to benefit from patent protection in Poland, will have to apply for it either directly at the Polish Patent Office or via the existing international route.

With the entry into force of the unitary system, the Unified Patent Court (UPC) will also

become operational, with jurisdiction over not only unitary patent cases, but also European patents. Poland, despite calls from practitioners, has ultimately decided not to join the system. Nonetheless, the new regulations may apply to some Polish businesses.

### 'Sunrise period'

'Classic' European patent holders will be able to opt out of the jurisdiction of the UPC for a period of 7 years after the entry into force of the system (with an option to extend this period for a further 7 years). This applies to those whose proceedings are already pending or have yet to commence and to other right holders.

This will require a formal request to be filed with the UPC, meaning that for 'classic' European patents, the parallel jurisdiction of the UPC and the national authorities will apply under the existing rules during the 7-year transitional period.

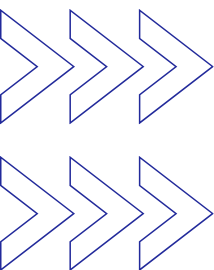
On the other hand, during the sunrise period from 1 March to 31 May this year, current 'classic' patent holders can request opt-out clauses for granted European patents and published applications to exclude the jurisdiction of the UPC.

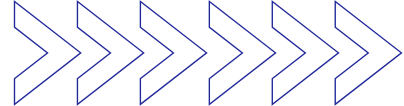
### In or out of the unitary patent system?

The answer to this question is far from obvious. One of the major advantages of the unitary system is automatic patent validation in all EU Member States within the agreement.

On the other hand, a clear disadvantage is the need to maintain a patent also in markets of countries that may be completely irrelevant to a business operator. Another disadvantage can be the high cost of the proceedings which, according to the UPC's price list, can run into tens of thousands of euros.

Undoubtedly, the use of the possible exemption from the jurisdiction of the UPC requires a thorough analysis by business operators in terms of their own needs and business plans.





# NATIONAL E-INVOICING SYSTEM



 WIKTORIA TRACICHBLEB



 JAKUB DITTMER

On 15 March this year, the Standing Committee of the Council of Ministers gave its favourable opinion on a bill concerning amendments to the VAT Act and certain other acts in connection with the introduction of a mandatory National e-Invoicing System (KSeF).

Work is currently underway in the legal committee of the Government Legislation Centre.

One of the most important changes in the new bill is the postponement of the entry into force of the amendment from 1 January 2024 to 1 July 2024. Similarly, the deadline for the implementation of the KSeF by taxpayers exempt from VAT based on their turnover or type of business activity has been extended by an additional six months – the KSeF will be obligatory for them from 1 January 2025.

The proposed changes are meant to introduce a general obligation to use the National e-Invoicing System, while also modifying certain solutions and adding other such as digitalisation of binding information (e-WIS).

## List of the key tax solutions provided for in the bill

### Cash register invoices and NIP (tax identification number) receipts

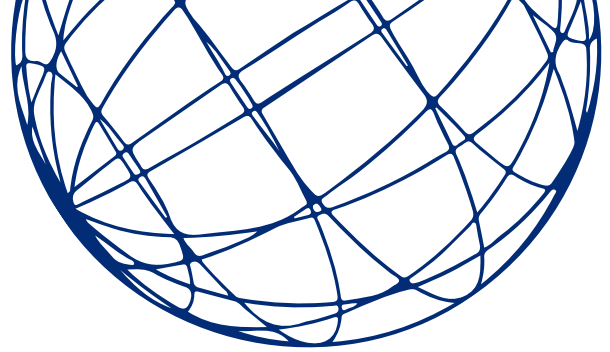
Cash register invoices will be allowed in their current form until 31 December 2024, as will receipts with NIP, which will be recognised as simplified invoices until then.

### Penalties for non-compliance with KSeF obligations - deferred and mitigated

The new bill also provides for more lenient sanctions for taxable persons who fail to comply with their KSeF obligations. In accordance with the bill, taxable persons who:

- Fail to issue an invoice using KSeF
- Issue an invoice not in accordance with the template provided
- Fail to send an invoice to KSeF on time





may be subject to a fine of up to 100 % of the amount of tax shown on the invoice issued outside the KSeF, and, in the case of an invoice without any tax shown, a fine of up to 18.7 % of the total amount due shown on such invoice issued outside the KSeF.

### The new sanctions will apply from 1 January 2025.

#### Invoices excluded from the KSeF system

Not all invoices will fall under the KSeF regime. The obligation to issue structured invoices will not apply to:

- Invoices issued by foreign entities (not having a place of establishment of their business or a fixed establishment in Poland)
- Invoices issued by taxable persons without a place of establishment of business in Poland, who have a fixed place of business in Poland, with this fixed place of business not being involved in the supply of goods or services for which the invoice is issued
- Invoices documenting activities for the benefit of private individuals not engaged in business activity (B2C consumer invoices)
- Invoices issued under OSS and IOSS procedures
- Tickets serving as invoices (including toll motorway receipts)

#### Solutions in the event of a KSeF failure

The proposed changes provide new solutions to enable the issuing of invoices during problems of accessibility to KSeF on the side of the taxable person, or inaccessibility related to the system.

Taxable persons are required to send or make available invoices issued during this period to the recipient in a manner agreed with the recipient, which means delivering a paper or electronic invoice to the purchaser, as preferred by the purchaser (who may also choose to receive the invoice in the KSeF).

Taxable persons must send the invoices issued offline to the KSeF no later than the next business day after the date on which the invoices were issued, in order to be assigned a KSeF number. They must also mark such invoices so as to enable verification of the data contained therein.

For an invoice issued during a breakdown, the date indicated by the taxable person on the invoice is deemed to be the date of issue, while the date of the actual receipt of such invoice by the purchaser is deemed to be the date of receipt.

#### Verification of invoices by QR code

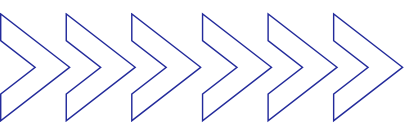
Taxable persons will be required to mark each e-invoice with a QR verification code. By means of this code, the KSeF will provide a functionality to verify whether an invoice has been issued in the KSeF and whether the data it contains is correct.

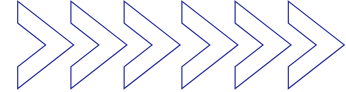
E-invoices should be marked with a QR verification code every time they are visualised.

Having scanned the QR code, taxable persons will be able to quickly and easily verify invoices against their original KSeF data.

#### Faster VAT refunds

The proposed solution provides for the elimination of the 60-day time limit for VAT refunds, to be replaced by a shorter 40-day standard time limit for the refund of the excess of input VAT over output VAT.





## Digitalisation of binding information (e-WIS)

WIS, i.e. binding rate information, will become completely digitalised. WIS is issued by the Director of the National Revenue Information (KIS) in respect of determining the appropriate VAT rate according to the CN (Combined Nomenclature) classification for goods or PKWiU (Polish Classification of Goods and Services, Polska Klasyfikacja Wyrobów i Usług) for services, and obliges tax offices to respect it for 5 years from its issuance.

The bill also provides for the implementation of exclusively electronic handling of binding information such as: WIT (binding tariff information), WIP (binding origin information), WIA (binding excise information), and WIS (binding rate information) - through the expansion and adjustment of the IT systems of the National Revenue Administration - KAS already in place (such as e-Urząd Skarbowy (e-Tax Office), PUESC (Fiscal and Customs Electronic Services Platform, Platforma Usług Elektronicznych Skarbowo-Celnych).

The proposed solutions are based on extending the potential of the KAS tools already in operation and do not require any technological implementation for taxpayers.

## New deadlines

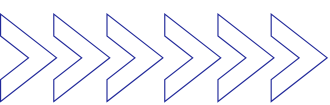
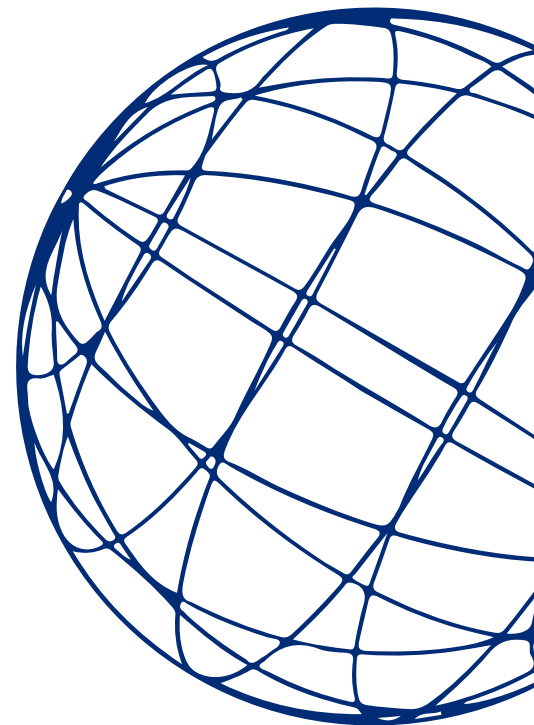
The deadline for the mandatory implementation of KSeF for businesses has been postponed. The Ministry of Finance has postponed the effective date for mandatory electronic invoicing to 1 July 2024, while for taxable persons exempt from VAT- to 1 January 2025.

## Other changes

Adjustment notes (issued against structured invoices and in other forms) will be abolished.

The obligation to issue structured invoices and the rules for issuing such invoices introduced by the VAT Act for suppliers or service providers, will also apply to invoices issued in the name and on behalf of such taxable persons. This applies to so-called self-invoicing and contractual invoicing, e.g. under a contract for the provision of invoicing services.

The possibility of self-invoicing should however still be confirmed in a contract concluded between the two entities.





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