

INFORMATION - Poland

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Poland, there are no use and enjoyment rules applicable with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons with Article 59a of Directive 2006/112/EC.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In Poland, telecommunications services provided to non-VAT taxable persons become taxable:

- upon issue of an invoice;

- if an invoice is not issued before the expiry of the time limit for payment - upon the expiry of the time limit for payment. Payment, in whole or in part, is not relevant to determine when VAT is chargeable.

Reference to the above may be found in Article 19a section 5 point 4. b, section 7, section 8 and Article 106b section 3 point 1 of the Polish VAT Act.

In Poland, broadcasting and electronic services provided to non-VAT taxable persons become taxable when the service is delivered, unless, payment in whole or in part (in particular pre-payment, advance payment, earnest money, instalment) is received before the service is provided. In that case, VAT becomes chargeable upon receipt of the payment in accordance with the amount received.

Reference to the above may be found in Article 19a section 1 and section 8 of the Polish VAT Act.

Cash Accounting Scheme for taxable persons, who declare telecommunications, broadcasting and electronic services via MOSS (thus not registered for VAT purposes in Poland) is unavailable.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In Poland, VAT on continuous supplies of broadcasting and electronic services provided to non-VAT taxable persons becomes generally chargeable at the end of the period to which a payment or settlement relates (where successive deadlines for payment or settlement are determined), until such time as the supply of the service comes to an end.

However, if the service is provided on a continuous basis for more than one year and any payment or settlement deadline does not expire in a given year, VAT will become chargeable at the end of the relevant tax year (31 December), until the supply of the service comes to an end.

Reference to the above may be found in Article 19a, section 3 of the Polish VAT Act.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

In Poland where the recipient and the service provider have a relationship such as family (including adoption), capital, property or links resulting from employment and where the remuneration is:

1) lower than the market value and the recipient has a limited right to input VAT recovery;

2) lower than the market value and the service provider does not have full right to recover input VAT, the services are VAT-exempt;

3) higher than the market value, the service provider does not have full right to recover input VAT.

The tax authority will deem the service to be provided at market value where the relationship between the parties influenced the service consideration.

Reference to the above may be found in Article 32 of the Polish VAT Act.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

In Poland, bad debt relief is not available with respect to supplies of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

References regarding Bad Debt relief are provided in Article 89a section 2 of the Polish VAT Act.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Poland, a reduced VAT rate (currently 8%) applies to services, other than those supplied electronically, involving reception of TV and radio program broadcasting via reception devices, except for Audio/Video On Demand services (excluding advertising and promotional services). For any other services the standard rate of 23% should apply.

Reference to the above may be found in Annex 3, item 169 of the Polish VAT Act.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In Poland the standard VAT rate is 23%.

Reference to the above may be found in Article 41 section 1 and Article 146a point 1 of Polish VAT Act.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Poland has not implemented a rule whereby taxable persons are released from the payment of VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Poland, there is no obligation to issue a VAT invoice with respect to the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons. However, in principle, an invoice should be issued when requested by the customer within 3 months from the end of the month when the service was rendered or the whole or part of the consideration was received (this option does not apply to telecommunications services). Reference to the above may be found in Article 106b, section 3, point 1 of the Polish VAT Act.

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Poland, content of an invoice, is subject to the rules laid down in Directive 2006/112/EC. Generally, there is no tax requirement to issue invoices in Polish.
Reference to the above may be found in Article 106e of the Polish VAT Act.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

For telecommunications services there is no obligation to issue an invoice. With regard to broadcasting and electronic services, the customer may request an invoice within 3 months of acquiring the service or paying the invoice in whole or in part.

Reference to the above may be found in Article 106b, section 3, point 1 of the Polish VAT Act.

In cases referred to in Article 106b, section 3 of the Polish VAT Act, the invoice shall be issued:

- 1) By the 15th day of the month following the month in which the service was rendered or whole (or part) of the consideration was received from the customer before the service was rendered where the issue of an invoice was requested before the end of the month in which the service was completed, or the whole or part of the consideration was received;
- 2) By the 15th day of the date of the request where the issue of an invoice was requested after the expiry of the month.

Reference to the above may be found in Article 106i, section 6 of the Polish VAT Act. After these dates taxpayer may issue an invoice but he has no such obligation.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

Where required, taxable person may issue summary invoices for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Where required, electronic invoices will be subject to the rules laid down in Directive 2006/112/EC.
Reference to the above may be found in Article 106n of the Polish VAT Act.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Where required, electronic invoices are subject to the rules laid down in Directive 2006/112/EC.
Reference to the above may be found in Article 106n of the Polish VAT Act.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

Poland has not implemented any rules or anti-avoidance measures that may directly impact telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

There are no provisions which are applicable under a Stand-still Scheme in the Polish VAT legislation or subject to common practice in Poland that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

VAT Treatment of vouchers

There are no specific rules in the Polish VAT Law regarding the VAT treatment of vouchers.

With respect to prepaid telecommunications cards, according to the Polish tax authorities' practice, VAT is chargeable upon sale.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

Under the Polish VAT Law, exemption applies to services provided by:

- a) units included within the education system in the meaning of the Polish regulations concerning the education system, with respect to learning and upbringing;
- b) institutions of higher education, scientific units of the Polish Academy of Sciences, and research and development units, with respect to education.

The exemption is also applicable for the following services:

- a) private educational services at preschools, elementary schools, middle schools, high schools and higher education levels, provided by teachers;
- b) foreign language teaching services;
- c) vocational training and retraining services:
 - i. provided in forms and under the rules provided in separate regulations, or
 - ii. provided by entities that have obtained accreditation for purposes of regulations concerning the education system, but solely with respect to services covered by the accreditation or
 - iii. financed entirely or at least 70% out of public funds

as well as supply of goods and services strictly connected with the above-mentioned services (excluding the exemption for private educational services provided by teachers). However these exemptions shall not apply to the supplies of goods or services closely related to services which are not essential to the supply of the main service or if the basic purpose is to obtain additional income by carrying out activities which are in competition with those of a taxable person not subject to an exemption.

Reference to the above may be found in Article 43, section 1, point 26 to 29, section 17 and 17a of the Polish VAT Act, as well as executive act. There are no specific provisions applied to e-learning.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

Under the Polish VAT Law, games of chance, mutual betting, games on machines which are subject to gaming tax are VAT exempt.

Reference to the above may be found in Article 43, section 1, point 15 of the Polish VAT Act.

Note that, in Poland, organising gambling activities without authorisation from the Minister of Finance and participation in such gambling activities via the Internet is forbidden and subject to penalties.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

There are no further exemptions in the Polish VAT legislation under which the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may fall.

VAT Registration Process

Registration under the MOSS must be made electronically.

The application is made via a VIU-R for (EU established taxpayers) or a VIN-R form (non-EU established taxpayers) submitted electronically to the head of the second tax office (Naczelnik Drugiego Urzędu Skarbowego Warszawa - Śródmieście).

Reference to the above may be found in Articles 130a-134 of the Polish VAT Act. The access to the registration forms is available on the website <http://www.finanse.mf.gov.pl/systemy-informatyczne/e-deklaracje/formularze/vat>.

Access to web-portal and contact details of the local VAT Authorities

Website: <http://www.finanse.mf.gov.pl/vat/maly-punkt-kompleksowej-obslugi-moss/wyjasnienia-i-komunikaty>

General Contact:

e-mail: VAT2015MOSS@mofnet.gov.pl

Appointment of a VAT Agent

There is no specific guidance in the Polish VAT legislation regarding the appointment of a VAT Agent for taxpayers providing services under the MOSS.

Penalties for non-compliance (Failure to register and late registration)

Non-registration and/or late registration are subject to fines of PLN 185 - PLN 37,000.

It is possible to avoid penalties by filling a voluntary disclosure explaining the circumstances for non-registration or late registration.

The voluntary disclosure will not mitigate penalties if it is submitted:

- once the tax authorities already have knowledge of the offence,
- once the tax authorities starts actions leading to the disclosure of the offence, unless the actions do not provide any grounds to initiate proceedings of the offence.

The above penalties are not provided in the VAT law. The fines described above are indicated in Penal Fiscal Code (Article 81, section 1, point 1, Article 16, Article 48, section 1).

Penalties for non-compliance (Non-payment and late payment of VAT)

Non-payment and/or late payment of the VAT may lead to the following penalties:

1) Obligation to pay the amount of VAT due along with penalty interest (currently 8% per annum). Reduced interest rate equal to 50% of the basic rate (currently it is 4% per annum) or increased interest rate equal to 150% of the basic rate (currently it is 12% per annum) will be applied to VAT tax unpaid or paid after the date of payment under certain conditions (Tax Ordinance Act, Article 56a and Article 56b).

2) Additional VAT liability (fine valid since the beginning of 2017)

In case during tax audit or audit proceedings the tax authorities identify that VAT return is not submitted for certain settlement period and related VAT liability is not made to the tax authorities, they will assess additional VAT liability (fine) amounting to 30% of the amount of VAT arrears not settled.

The amount of the additional VAT liability may be limited to 20% in case after the tax audit or during audit proceeding the outstanding VAT return is submitted to the tax authorities and related VAT liability is paid.

The additional VAT liability is not imposed in case the outstanding VAT return is submitted to the tax authorities and related VAT liability is paid to the tax authorities along with penalty interest due before the audit/audit proceedings are launched.

Reference to the above may be found in Article 112b, section 1, point 2; section 2, point 2; section 3, point 1) b) of the Polish VAT Act.

3) Fines (PLN 185 - PLN 37,000) - if the taxpayer persistently does not pay taxes. However, if all tax due is paid prior to the initiating proceedings of the offence, the fines may not be imposed.

Also, it is possible to avoid potential penalties by filling a voluntary disclosure explaining the circumstances of non-payment or late payment.

The voluntary disclosure will not mitigate penalties if it is submitted:

- once the tax authorities already have knowledge of the offence,
- once the tax authorities starts actions leading to the disclosure of the offence, unless the actions do not provide any grounds to initiate proceedings of the offence.

The above penalties are not provided in the VAT Law. The fines described above are indicated in Penal Fiscal Code (Article 57, section 1, Article 16, Article 48 section 1) and the rules regarding the calculation of penalty interest are indicated in the Tax Ordinance Act (Article 56, Article 56a, Article 56b).

Penalties for non-compliance (Non-submission and late submission of VAT returns)

Non-submission and/or late submission of VAT returns are subject to fines up to PLN 17,760,960 or potential imprisonment if non-compliance leads to non-payment of VAT.

It is possible to avoid potential penalties by filing a voluntary disclosure statement explaining the circumstances of non-submission or late submission of VAT returns.

The voluntary disclosure will not mitigate penalties if it is submitted:

- once the tax authorities already have knowledge of the offence,
- once the tax authorities starts actions leading to the disclosure of the offence, unless the actions do not provide any grounds to initiate proceedings of the offence.

If together with non-submission and/or late submission of VAT returns VAT was not paid or was underpaid, the relevant penalty interest should also apply.

The above penalties are not in VAT Law. The fines described above are indicated in Penal Fiscal Code (Article 54, Article 16, Article 23, section 3) and the rules regarding the calculation of penalty interest are indicated in Tax Ordinance Act (Article 56, Article 56a, Article 56b).

Additional VAT liability (fine valid since the beginning of 2017)

In case during tax audit or audit proceedings the tax authorities identify that VAT return is not submitted for certain settlement period and related VAT liability is not made to the tax authorities, they will assess additional VAT liability (fine) amounting to 30% of the amount of VAT arrears not settled.

The amount of the additional VAT liability may be limited to 20% in case after the tax audit or during audit proceeding the outstanding VAT return is submitted to the tax authorities and related VAT liability is paid.

The additional VAT liability is not imposed in case the outstanding VAT return is submitted to the tax authorities and related VAT liability is paid to the tax authorities along with penalty interest due before the audit/audit proceedings are launched.

Reference to the above may be found in Article 112b, section 1, point 2; section 2, point 2; section 3, point 1) b) of the Polish VAT Act.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

Submission of incomplete and/or incorrect VAT returns are subject to fines up to PLN 17,760,960 or potential imprisonment if non-compliance leads to non-payment of VAT.

It is possible to avoid potential penalties by filing a voluntary disclosure statement explaining the circumstances of the incomplete and/or incorrect submission of VAT returns.

The voluntary disclosure will not mitigate penalties if it is submitted:

- once the tax authorities already have knowledge of the offence,
- once the tax authorities starts actions leading to the disclosure of the offence, unless the actions do not provide any grounds to initiate proceedings of the offence.

If together with non-submission and/or late submission of VAT returns VAT was not paid or was underpaid, the relevant penalty interest should also apply.

The above penalties are not in VAT Law. The fines described above are indicated in Penal Fiscal Code (Article 54, Article 16, Article 23, section 3) and the rules regarding the calculation of penalty interest are indicated in Tax Ordinance Act (Article 56, Article 56a, Article 56b).

Additional VAT liability (fine valid since the beginning of 2017)

In case during tax audit or audit proceedings the tax authorities identify that:

- VAT liability resulting from the VAT return is understated; or
- VAT refund amount resulting from the VAT return is overstated; or
- VAT amount to be carry forward for the next period indicated in the VAT return is overstated;

They will assess additional VAT liability amounting to 30% of the amount of:

- VAT liability understatement, or
- VAT refund overstatement, or
- the carry forward amount overstatement.

The amount of the additional VAT liability may be limited to 20% in case after the tax audit or during audit proceeding corrections of the VAT returns are submitted to the tax authorities and related additional payments are made, or undue refund is paid back to the tax authorities.

The additional VAT liability is not imposed in case:

- the corrections of the returns are submitted to the tax authorities and related VAT liabilities are paid to the tax authorities along with penalty interest due before the audit/audit proceedings are launched;
- the incorrect value of VAT liability/refund/carry forward amount results from calculation or typing mistake;
- the output or input VAT to be included in certain settlement period is already reported in another settlement period before the audit/audit proceedings are launched.

Reference to the above may be found in Article 112b of the Polish VAT Act

In case the above irregularities are caused by reporting input VAT resulting from invoices:

- issued by non-existent entity;
- covering activities which were not performed;
- providing false amounts;
- covering transactions which are not valid from legal perspective

the additional VAT liability is assessed as 100% of the input VAT reported and resulting from the above.

Reference to the above may be found in Article 112c of the Polish VAT Act.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

The penalties depend on the type of non-compliance. Failure to keep VAT registers or keeping them not in accordance with law is subject to fine of up to PLN 5,920,320. Failure to issue invoices or issue them not in accordance with law is also subject to a fine of up to PLN 4,440,240 or up to PLN 5,920,320.

It is possible to avoid potential penalties by filling a voluntary disclosure explaining the circumstances of non-compliance.

The voluntary disclosure will not mitigate penalties if it is submitted:

- once the tax authorities already have knowledge of the offence,
- once the tax authorities starts actions leading to the disclosure of the offence, unless the actions do not provide any grounds to initiate proceedings of the offence.

If together with non-compliance VAT was not paid or was underpaid, the relevant penalty interest should also apply.

The above penalties are not provided in the VAT Law. The fines described above are indicated in Penal Fiscal Code (Articles 60 - 62, Article 16, Article 23, section 3) and the rules regarding the calculation of penalty interest are indicated in Tax Ordinance Act (Article 56, Article 56a, Article 56b).