

# News Flash

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**New rules in VAT taxation applied in 2017 to the certain construction services - Poland**

## New rules in VAT taxation applied in 2017 to the certain construction services

One of the most important change in the Polish VAT Regulation which came into force on January 1st 2017, is the application of reverse charge mechanism to construction services. The condition for the application of the “reverse charge” is that the service provider shall be a payer of tax on goods and services, and the customer is a payer of tax on goods and services.

### Conditions of use

In accordance with the provisions of article 17, paragraph 1, point 8 and article 17 paragraph 1 (h) of the VAT Act, ***in order to take advantage of the reverse charge procedure*** in case of construction services **the following conditions need to be met jointly:**

- the subject of purchase are services listed in Annex 14 to the VAT Act in item 2-48 (those services may be divided into the following categories: construction works related to the erection of buildings; works related to the construction of roads and bridges; works related to the construction of pipelines, water supply pipelines, transmission lines, power stations; works related to the execution of any installations; works related to the finishing of buildings;
- the service provider is an active VAT payer, to whom the sale is non-exempt from tax under art. 113 paragraph 1 and 9 of the Act of VAT, and he provides the aforesaid construction services as a subcontractor;
- the recipient is an entity registered as an active VAT payer.

If the above mentioned conditions shall not be met, the already existing rules provided for the accounting of building and construction-assembly services shall be applied.

The new terms, under which the taxation of construction services referred to the Annex nr 14 applies only to services provided from the beginning of 2017. It means that for the construction services provided before 2017, VAT should be settled on the basis of the general principles. In order to determine the moment of the services performance, article 19a paragraph 2 and 3 of the Act of VAT should be applied.

### Problems of interpretation

Considering that neither tax authorities nor administrative courts has not presented its interpretation of the aforementioned regulations yet, a number of concerns raised about the above. Therefore, it is worth to look at the most important of them:

#### (i) The definition of "subcontractor"

The construction services are provided mostly by the three types of entities: the investor, the prime contractor and the subcontractor. When these services are commissioned to the consecutive subcontractors and are subjected to the reverse charge at the same time, they form the specific chain of subcontractors.

In the VAT Act the statutory definition of “subcontractor” was nor defined therefore the new regulations may raise a concerns. In a report available on the Ministry of Finance official website some explanations may be found, from which follows that for the proper understanding of the term "**subcontractor**" the definition from the online edition of the Polish

language dictionary shall be sufficient. In accordance with the above **the subcontractor is a company or a person who performs work on behalf of the main contractor**. At the same time, in the case of further subcontracts, the approach that the subcontractor commissioning works to its subcontractor, in relationship with that subcontractor, should be treated as the primary customer (within the scope of work undertaken by the main contractor) shall be adopted.

### **(ii) Re invoicing**

The existing provisions of the VAT Act do not apply to issues related to the re-invoicing of construction services covered by reverse charge mechanism. In practice, in the case of re-invoicing, the legal fiction is accepted by which the taxpayer received and provided services. Therefore, taking into account the above mentioned, it should be assumed that to the construction services covered by the reverse charge mechanism, applies re-invoicing analogous to the re-invoicing of other goods covered by reverse charge.

### **(iii) Chain Services**

After the entry into force of the new provisions regarding the reverse charge mechanism, there are also concerns about the treatment of complex services, for instance: construction services along with the preparation of project and/or delivery of goods. Should, in this case, such services be divided into: (1) construction services (subjected to reverse charge) and (2) design services/delivery of materials which will not be subjected to reverse charge?

In our opinion, in order to identify the individual transaction chain of those that will be subjected to the reverse charge mechanism and those that should be settled on the basis of general principles, **each agreement should be analyzed for the status of the conductor in the relation with the contractor and the ability to establish it as an subcontractor**. An incorrect classification of the taxpayer as a contractor or subcontractor will result in not only the obligation to pay the tax and interest, but also 30% VAT sanction.

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News Flash | Accace Poland | New rules in VAT taxation applied in 2017 to the certain construction services

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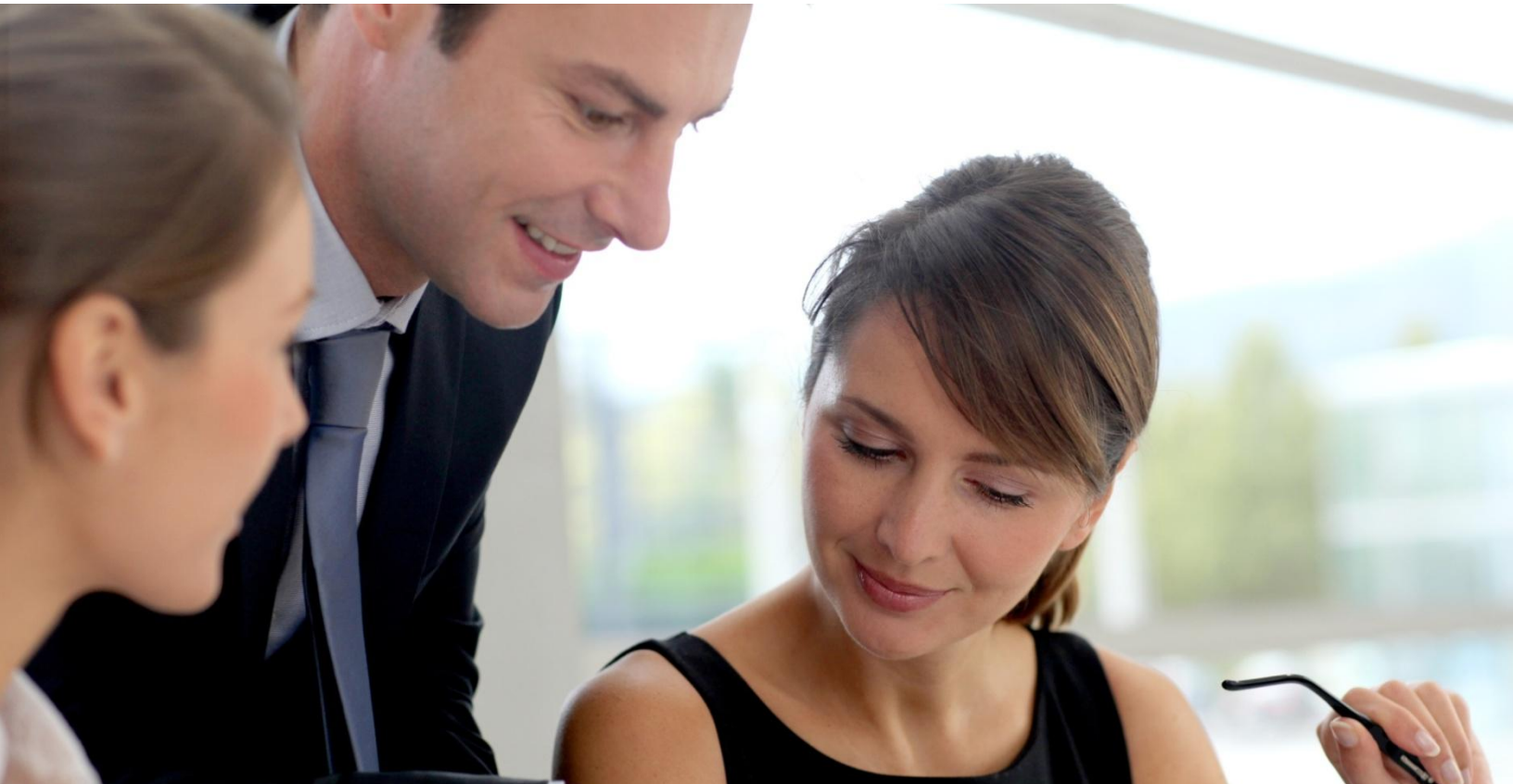
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