



E-COMMERCE

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CHANGES INTRODUCED IN THE SLIM VAT 2 PACKAGE AND THE SLIM VAT 3 PACKAGE

ALSO FOR
THE E-COMMERCE

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CHANGES INTRODUCED IN THE SLIM VAT 2 PACKAGE AND THE SLIM VAT 3 PACKAGE

Two packages of legal changes have recently come into effect, aiming to facilitate Value Added Tax (VAT) settlements.

These changes were introduced in:

- the Act of August 11, 2021, amending the VAT Tax Act and the Banking Law - known as the **SLIM VAT 2** package, and
- the Act of May 26, 2023, amending the VAT Tax Act and certain other laws - known as the **SLIM VAT 3** package.

Below, we would like to present the most significant changes introduced through the **SLIM VAT 2** and **SLIM VAT 3** packages.

DEFINITION OF A SMALL TAXPAYER

The **SLIM VAT 3** package has amended the definition of a small taxpayer contained in Article 2, point 25, letter a of the VAT Act. Currently, a small taxpayer is a VAT taxpayer whose sales value, including the tax amount, did not exceed in the previous tax year, the amount expressed in PLN corresponding to the equivalent of **2,000,000 EUR** (previously **1,200,000 EUR**).

EXCHANGE RATES FOR CORRECTIVE INVOICES

The **SLIM VAT 3** package regulates the issue of which foreign currency exchange rate should be applied when it comes to correcting an invoice in which the tax base was expressed in a foreign currency.

Thus:

- If the correction leads to a change in the amount used to determine the taxbase, which was originally expressed in a foreign currency, the conversion to PLN should be made at the exchange rate in effect before the correction,
- If the correction is issued due to a discount or reduction in prices, and the amounts of the invoice were stated in a foreign currency, the conversion to PLN can be made using either:
 - » The exchange rate announced by the NBP (National Bank of Poland) on the last working day preceding the issuance of the corrective invoice,
 - » The latest exchange rate published by the European Central Bank, also on the last working day preceding the issuance of the corrective invoice (with currencies other than the Euro, the conversion is made using the rate of that currency to the Euro).

Similar rules apply when a discount or price reduction concerns the supply of goods or provision of services to a taxpayer making intra-Community acquisitions of goods or a taxpayer who is the recipient of a service, as referred to in Article 17, paragraph 1, point 4 of the VAT Act, or who is the purchaser of goods as referred to in Article 17, paragraph 1, point 5 of the VAT Act.

However, the aforementioned rules do not apply if the taxpayer, in accordance with Article 31a, paragraph 2a of the VAT Act, has opted for foreign currency conversion rules in accordance with the rules for conversion of income defined in a foreign currency resulting from income tax regulations.

RIGHT TO REDUCE THE AMOUNT OF TAX DUE IN THE CASE OF INTRA-COMMUNITY SUPPLY OF GOODS

The right to reduce the amount of tax due by the amount of deducted tax in the case of intra-Community acquisition of goods, as referred to in Article 9 of the VAT Act, arises in the settlement for the period in which tax liability arose in relation to goods and services purchased or imported by the taxpayer.

However, the **SLIM VAT 2** and **SLIM VAT 3** packages have simplified the conditions under which one can benefit from this right:

- In the **SLIM VAT 2** package, the three-month time limit was removed for the taxpayer to include the amount of due tax resulting from intra-Community acquisition of goods in the tax return in which they are obliged to settle this tax,
- In the **SLIM VAT 3** package, the condition requiring the taxpayer to receive an invoice documenting the supply of goods constituting his intra-Community acquisition of goods within three months from the end of the month in which the tax liability arose concerning the acquired goods was removed.

Therefore, under the current legal status, the right to reduce the amount of due tax by the amount of deducted tax in the case of intra-Community acquisition of goods arises only if the taxpayer includes the amount due from intra-Community acquisition of goods in the tax return in which they are obliged to settle this tax.

PROOF OF INTRA-COMMUNITY SUPPLY OF GOODS

In the case of untimely collection of evidence that goods subject to intra-Community supply of goods were exported from the country's territory and delivered to the purchaser in the territory of another member state receipt of such documents entitles the taxpayer to show the intra-Community supply of goods at a 0% **rate for the accounting period in which the tax liability for his supply arose.**

Prior to the implementation of the **SLIM VAT 3** package, demonstrating such supply was possible in the settlement for the period in which the supply took place.

In addition, the **SLIM VAT 3** package offered the possibility to submit corrections to VAT returns outside the OSS and IOSS systems directly to the Łódź Tax Office electronically, using an IT application.

REDUCTION OF THE AMOUNT OF DUE TAX BY THE AMOUNT OF DEDUCTED TAX

In the **SLIM VAT 2** package, the requirements for reducing the amount of due tax by the amount of deducted tax were limited to:

- Provision of services for which the taxpayer is the service recipient in accordance with Article 17, paragraph 1, point 4 of the VAT Act,
- Supply of goods for which the taxpayer is where the purchaser in accordance with Article 17, paragraph 1, point 5 of the VAT Act,
- Intra-Community acquisition of goods for consideration as referred to in Article 9 and Article 11 of the VAT Act.

The three-month time limit from the end of the expiration of the month in which the tax liability arose with respect to the acquired goods or services, and in which the taxpayer had to include the amount of tax due to these transactions in the tax return in which he is obliged to settle this tax, was removed.

POSSIBILITY OF CORRECTING THE VAT RETURN

If the taxpayer has not deducted the deducted tax from the due tax within the statutory deadline, he can amend his tax declaration and carry out such settlement.

Prior to the implementation of the **SLIM VAT 2** package, such corrections could be made for the period in which the right to reduce the amount of due tax arose.



Currently, the correction is also possible:

- Within one of the three subsequent months after the month in which the right to deduction arose – for taxpayers applying monthly settlements,
- Within one of the two subsequent quarters after the quarter in which the right to deduction arose – for taxpayers applying quarterly settlements.

Still, corrections can be made no later than within 5 years counting from the beginning of the year in which the right to deduction arose.

POSSIBILITY OF ADJUSTMENT IN THE CASE OF A SIMPLIFIED PROCEDURE

According to Article 33a (1) of the VAT Act, a taxpayer registered as an active VAT taxpayer can settle the amount of VAT due on the import of goods in the VAT declaration submitted for the period in which the tax liability arose from the import of these goods. This is a simplified procedure.

SLIM VAT 2 package introduces the possibility of correcting the VAT declaration when using the simplified procedure. According to the added Article 33(6a) of the VAT Act, if a taxpayer did not account for the entire or partial VAT due on the import of goods in the simplified procedure, he may correct the declaration within four months, counting from the month following the month in which the tax liability arose from the import of those goods.

This means that if a taxpayer mistakenly does not include the tax from a transaction under the simplified procedure, they can correct the VAT declaration within four months.

A taxpayer using the simplified procedure will lose the right to account for the VAT due on the import of goods shown in the customs declaration only if they have not accounted for this tax in full or in part within four months from the month following the month in which the tax liability arose from the import of those goods.

CHAIN TRANSACTIONS

In **SLIM VAT 2**, the issue of chain supplies has been specified, i.e. those that occur between at least three entities and in which goods are transported from the first entity in the chain to the last entity in the chain.

According to Article 22(2) of the VAT Act, where the same goods are the subject of successive supplies and are sent or transported directly from the first supplier to the last purchaser in order, the dispatch or transport is attributed exclusively to one supply.

SLIM VAT 2 specified to which of the supplies these dispatches are attributed to. Thus:

- If the dispatch or transport is organized by the first supplier (the first entity in the chain) – it is attributed to their supply,
- If the dispatch or transport is organized by the last supplier (the last entity in the chain) – it is attributed to the supply made to that purchaser.

BAD DEBT RELIEF

SLIM VAT 2 has reduced the requirements that must be met to qualify for bad debt relief.

Currently, this relief can be claimed if:

- On the day preceding the submission of the tax return, in which the correction of the tax base and the tax due is made, the creditor is registered as an active VAT taxpayer,
- From the date of issuance of the invoice documenting the receivable has not passed 3 years counting from the end of the year in which it was issued.

Additionally, **SLIM VAT 2** introduced the possibility of claiming bad debt relief if the debtor is a different entity than the active VAT taxpayer. This relief can be claimed if:

- The debt has been confirmed by a final court judgment and referred to enforcement proceedings, or
- The receivable has been entered into the national debt register, or
- Bankruptcy has been declared against the debtor based on separate provisions.

Furthermore, the **SLIM VAT 2** package also changed the scope of the debtor's obligations, as Article 89a(1b) of the VAT Act was deleted. Currently, the debtor is obliged to correct the input tax in the event that on the last day of the month in which the 90th day from the due date expires, even if the debtor was in restructuring proceedings, bankruptcy proceedings or in the process of liquidation.

VAT ON REAL ESTATE TRANSACTIONS

As a rule, the supply of buildings, structures, or their parts is exempt from VAT.

However, active VAT taxpayers can opt out of this exemption and choose to subject such supplies to VAT by mutual declaration that both sides of the transaction choose to subject the supply of buildings, structures, or their parts to VAT.

Previously, such a declaration had to be submitted before the delivery of these objects to the head of the relevant tax office. Thanks to the SLIM VAT 2 regulations, such a declaration can now be made in a notarial deed, concluded in connection with the supply of such objects (e.g., a notarial deed for the sale of real estate).

GOODS AND SERVICES USED FOR ACTIVITIES ELIGIBLE FOR VAT REDUCTION AND OTHER ACTIVITIES

Article 90 of the VAT Act regulates the issue of goods and services used by the taxpayer both for activities for which they are entitled to a reduction of the VAT amount due and for activities for which such right does not apply. In such a situation, the taxpayer is obliged to determine the VAT amount related to activities for which they are entitled to a reduction of the due VAT. If it is not possible to separate the amount for which the right to reduce the tax is applicable from the one for which it is not, then the proportion of activities for which the taxpayer is entitled to reduce the VAT amount to the entire turnover can be used.

The changes introduced by the **SLIM VAT 3** package in this respect are as follows:

- If the taxpayer had no turnover in the previous year or their turnover was less than **30,000 PLN**, an estimated proportion is assumed, and the taxpayer informs about the adopted proportion by the 25th day of the following month after applying the proportion for the first time,
- It is possible to assume a 100% proportion if the calculated proportion was 98%, and the amount of the input tax not subject to deduction resulting from the application of this proportion for the year was less than **10,000 PLN**,
- The taxpayer may not adjust the tax amount if, after the end of the year, it turns out that the difference between the estimated proportion and the proportion determined for the completed tax year did not exceed two percentage points.

DEADLINES FOR SUBMITTING DECLARATIONS TO DEDUCT 100% VAT ON EXPENSES RELATED TO THE USE OF A CAR

If a vehicle does not meet the technical requirements specified in the VAT Act but is used exclusively for business purposes, to benefit from full VAT deduction on expenses related to the use of such a car, the taxpayer must keep a vehicle mileage record and submit VAT-26 information.

The **SLIM VAT 2** package defined new, longer deadlines for submitting such information, for updating it, and for the commencement of exemption in case of a delayed submission of the declaration.

VAT-26 information must be submitted to the head of the tax office by the 25th day of the month following the month in which the first expense related to these vehicles was incurred, but no later than the day of sending the vehicle mileage records. If the information is not submitted within the specified deadline, the possibility of full deduction arises from the first day of the month in which the taxpayer submits this information. If there is a change in the use of the vehicle, the taxpayer must update the VAT-26 information. He has time until the end of the month in which he made the change.

ADDITIONAL TAX LIABILITY

The **SLIM VAT 3** package introduced changes regarding the additional tax liability that is imposed on the taxpayer if it is found that the taxpayer provided incorrect data in the tax declaration or did not submit a tax declaration and did not pay the amount of the tax liability. Whereas previously, the amount of the additional obligation was fixed in the law, now the legislator has determined its maximum amount.

The specific amount of the tax obligation is determined by the head of the tax office or the head of the customs and tax office, taking into account:

- Circumstances leading to the irregularities,
- Type and degree of violation of the taxpayer's obligation resulting in the irregularities,
- Type, degree, and frequency of previously identified irregularities regarding non-expired tax liabilities,
- Amount of identified irregularities, including the understatement of tax obligations, overstatement of tax return refunds, refunds of input tax, or reduction of tax due for subsequent settlement periods,
- Actions taken by the taxpayer after identifying irregularities in order to eliminate their effects.

POSSIBILITY OF RELEASING FUNDS FROM THE VAT ACCOUNT

The taxpayer can apply for the release of funds accumulated in the VAT account and their transfer to their settlement account. The **SLIM VAT 2** package provided the possibility of releasing these funds even if the taxpayer has tax arrears, provided that the said tax arrears have been covered by a decision to defer payment or to divide them into installments.



LIMITATION OF THE OBLIGATION TO PRINT DOCUMENTS

The **SLIM VAT 3** package provided the option to forgo the obligation to store a fiscal receipt in paper form. If the invoice or an electronic invoice concerns sales registered using a cash register, it is possible to choose whether to retain the fiscal receipt in paper form or the document number and the unique number of the cash register included in the electronic form of the fiscal receipt.



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DOMINIKA
Account Manager
for online retailers
regarding new clients
Localization: Wrocław



- ▶ **Phone:** +48 71 388 13 54
- ▶ **Mobile:** +48 608 34 32 32
- ▶ **Phone:** +49 151 46107772

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FEEL FREE TO CONTACT US

amavat Sp. z o.o.

ul. Zwycięska 45
53-033 Wrocław

Tel.: +48 71 388 13 54

E-mail: info@amavat.eu

▶ [amavat eu](#)
▶ [hlb-poland.global](#)

