

Mandatory E-Invoicing from 2024 – Key Features of the System and European Background

The National Electronic Invoicing System – commonly referred to as e-invoicing – is the next stage of the digitization of VAT obligations in Poland. After two years of operation of a voluntary system, from 2024, e-invoicing will be mandatory in Poland. Poland will then be the second EU Member State (after Italy) implementing mandatory e-invoicing in B2B relations.

1. Types of Digital VAT Reporting in the European Union in a Nutshell

The development and use of technological/digital tools to combat tax fraud did not start in Poland. Southern European countries were pioneers in this respect, and in many cases the process started outside Europe, especially in Latin American countries.

Currently, EU Member States use a variety of technological/IT tools to enhance tax compliance. Following a recent European Commission report,¹ these tools can be divided into two main groups. The Commission suggests a division based on the time at which taxable persons submit data to the tax administration:

- (1) information reported periodically at fixed intervals (periodic transaction controls, PTCs); and
- (2) data submitted in real time, i.e. before, during or shortly after the transfer of data between taxable persons (continuous transaction controls, CTCs).

Under the PTC model, data regarding business transactions between taxable persons must be transmitted according to a nationally defined format (VAT listing) or according to the SAF-T standard developed by the OECD (in Poland, this standard is referred to as *Jednolity Plik Kontrolny*, JPK). Data transfer under the SAF-T standard is required, among others, in Lithuania, Poland²

and Portugal.³ Transfer of business data to the tax administration in accordance with national requirements (VAT listing) is required in Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, and the Slovak Republic.

Under the CTC model, two types of reporting are distinguished:

- (1) real-time reporting; and
- (2) an electronic invoice sent in a specific format (e-invoice).

With real-time reporting, the taxable person is required to report data regarding a transaction immediately after its execution, not being, however, obliged to submit the invoice to the tax administration. This system is applied in Hungary⁴ and Spain.⁵ In contrast, e-invoicing implies that the taxable person provides the tax administration with a full invoice (or some of its elements or an excerpt from its content) in a structured format. In the European Union, mandated e-invoicing in B2B relations is currently used only in Italy.⁶ Besides Poland, also France,⁷ Germany⁸ and Romania⁹ obtained the authorization from the EU authorities (derogation decision) to introduce mandatory e-invoicing with respect to domestic transactions.

* Paweł Selera, PhD, LL.M., is the Director of the Goods and Services Tax (VAT) Department at the Ministry of Finance, Republic of Poland.

1. European Commission, Directorate-General for Taxation and Customs Union, *Annual Report on Taxation 2023: Review of Taxation Policies in the EU Member States* (30 June 2023), available at https://taxation-customs.ec.europa.eu/taxation-1/economic-analysis-taxation/annual-report-taxation_en (accessed 10 Oct. 2023).
2. In Poland, SAF-T was introduced in the form of *Jednolity Plik Kontrolny* in 2015, only as an on-demand file. Only the changes introduced in 2016 imposed the obligation on taxable persons to send the key JPK structure – electronic VAT records (i.e. register of VAT sales and purchases) automatically for monthly periods. See PL: Decree of the Minister of Finance of 13 May 2016 (as amended), Official Journal (Dziennik Ustaw) item 846, 2016.

3. A. Majdańska & K. Dziwiński, *The Potential of a Standard Audit File – Tax in the European Union: A Chance for Coordinated VAT Administration?*, 72 Bull. Intl. Taxn. 10 (2018), Journal Articles & Opinion Pieces IBFD (accessed 10 Oct. 2023).
4. Z. Szatmári, Hungary - Value Added Tax, Country Tax Guides IBFD (accessed 10 Oct. 2023).
5. In Spain, this type of reporting was introduced in 2017. However, this system, referred to as the Immediate Information System (IIS), provides for major exemptions both as regards entities and products and services covered by it. In practice, especially micro-enterprises are excluded from this obligation. See L.M. Romero Flor, *The New Spanish Immediate Information Supply System*, 29 Intl. VAT Monitor 6 (2018), Journal Articles & Opinion Pieces IBFD (accessed 10 Oct. 2023).
6. Council Implementing Decision (EU) 2021/2251 of 13 December 2021 amending Implementing Decision (EU) 2018/593 authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax, OJ L454 (2021).
7. Council Implementing Decision (EU) 2022/133 of 25 January 2022 authorising France to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax, OJ L20/272 (2022), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0133&from=EN> (accessed 10 Oct. 2023).
8. Council Implementing Decision (EU) 2023/1551 of 25 July 2023 authorising Germany to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax, OJ L188 (2023).
9. Council Implementing Decision (EU) 2023/1553 of 25 July 2023 authorising Romania to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax, OJ L188 (2023).

2. Origins of E-Invoicing in Poland: VAT Gap and Tools to “Seal” VAT Collection

VAT is a key source of revenue for the state budget in Poland (as is also the case in many other countries). The effectiveness of VAT collection and the “tightening of the system” is measured by the size of the VAT gap, defined as the difference between VAT theoretically due (theoretical state budget revenue) and VAT actually collected (actual receipts).¹⁰

Until recently, an upward trend in this area was a highly disturbing phenomenon in Poland. The VAT gap in Poland was systematically growing until 2015, when according to the European Commission it reached almost 25%. At that time, Poland was one of the countries with the largest VAT gaps in Europe (ranked sixth). According to the latest (2023) European Commission report on the VAT gap, in 2020, the VAT gap in Poland went down to 11.1%, which places Poland among the absolute EU leaders in reducing the VAT gap at the greatest rate in 2016-2020 – a decrease in the VAT gap by almost 9%.¹¹ According to the national estimates of the Ministry of Finance, the VAT gap in 2022 fell to 4.9%.¹²

The decrease in the VAT gap in Poland is due to numerous factors. In particular, it is the result of many legislative changes and the tax administration reform. The most important legislative changes include those that use new technologies to counteract the VAT gap. The IT tools implemented and developed in Poland in 2015-2023 are well-known solutions in use in other countries, such as SAF-T or split payment, as well as unique solutions, such as STIR (*System Teleinformatyczny Izby Rozliczeniowej*, the ICT system of the clearing house) or SENT (*System Elektronicznego Nadzoru Transportu*, system for electronic monitoring of transport).¹³

Thus far, the technological tools implemented in Poland do not entail an obligation of real-time reporting of transactions/documentation to the tax administration. Analytics, especially in the case of the key sealing tool, i.e. *Jednolity Plik Kontrolny* (JPK_VAT), is based on post-transaction data and takes place long after the transaction is completed and the invoice is issued by the taxable person. Therefore, the question could be asked whether it makes sense to introduce such a significant change as e-invoicing, now that Poland has one of the lowest VAT gap rates in the European Union? In the author’s view the answer is yes, for several reasons.

First, the international background should be pointed out. Following Italy, other EU Member States intend to

10. European Commission, VAT gap in the EU – report 2023 (2023), available <https://op.europa.eu/en/publication-detail/-/publication/84ba1bdf-7230-11ee-9220-01aa75ed71a1/language-en> (accessed 3 Nov. 2023) [hereinafter VAT gap report].
11. The latest data from the European Commission regarding Poland refers to 2021 estimating the VAT gap for 2021 at the level of 3.3 %.
12. *Program Konwergencji, Aktualizacja 2023 [Convergence Programme, Update 2023]*, (2023), available at <https://www.gov.pl/web/finanse/aktualizacja-programu-konwergencji> (accessed 10 Oct. 2023).
13. For more information on the solutions introduced in Poland, see J. Sarnowski & P. Selera, *Reducing the VAT Gap – Polish Experience and Legislative Measures Introduced in Years 2016-2018*, 30 Intl. VAT Monitor 3 (2019), Journal Articles & Opinion Pieces IBFD (accessed 10 Oct. 2023).

introduce e-invoicing and obtain the consent of the EU authorities for a mandatory model. Such consent has been requested, among others, by countries where the VAT gap is also at a low level (e.g. Germany, 2.8 % for 2021¹⁴).

Secondly, the VAT in the Digital Age (ViDA)¹⁵ project provides for the introduction of e-invoicing for intra-Community transactions, and it is only a matter of time before other countries start implementing e-invoices for domestic transactions.

Thirdly, e-invoicing not only further seals VAT, as shown by Italy, but it also has a positive impact on sealing income taxes, which is expected in Poland. And finally, countries that do not implement modern tax tools and, as a consequence, have weaker and slower tax analytics and relying on poorer quality data, become more susceptible to tax fraudsters.

The National E-Invoicing System (*Krajowy System e-Faktur*, KSeF) itself was introduced in Poland as a voluntary solution on 1 January 2022.¹⁶ “Voluntary” in this case means that it is necessary to obtain the consent of the customer to receive electronic invoices. Currently, e-invoices are thus only one of the acceptable forms of documenting transactions, next to paper invoices and electronic invoices that currently also routinely are used in business transactions. The optional period, and especially the option of issuing fully fledged invoices in Poland on a voluntary basis as well as its testing, paved the way for a mandatory model.¹⁷ At the moment, the KSeF is capable of handling up to 100 million invoices per day. At the design stage, the needs for hardware resources required to process and store about 2 billion e-invoices per year in KSeF were defined.

Having received authorization to move on to a mandatory model,¹⁸ Poland will implement such a mandatory system on 1 July 2024. It will be the second EU Member State to make this move, after Italy.¹⁹ The Polish mandatory e-invoicing

14. VAT gap report.
15. European Commission, Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age COM(2022)701 final, 8 Dec. 2022.
16. PL: Decree of the Minister of Finance of 2021, Official Journal (Dziennik Ustaw) item 2076, 2021. Earlier, in October 2021, a test version of the system available to taxable persons was launched.
17. 66,713 invoices were issued from 1 January 2022 to 8 August 2023. 957 entities that issued at least one invoice were identified in the production environment: data of the Ministry of Finance; response to press inquiry published *inter alia* in the daily legal newspaper *Dziennik Gazeta Prawna*, available at <https://podatki.gazetaprawna.pl/artykuly/9275542,mf-od-1-wrzesnia-w-ksef-zacznie-obowiazywac-nowa-struktura-e-faktury.html> (accessed 14 Oct. 2023).
18. Council Implementing Decision (EU) 2022/1003 of 17 June 2022 authorising the Republic of Poland to apply a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax, OJ L168 (2022) [hereinafter Decision 2022/1003].
19. Due to the postponement of the introduction of the mandatory e-invoicing in France, see Ministère de l’Économie, des Finances et de la Souveraineté Industrielle et Numérique, *Généralisation de la facturation électronique : Report de l’entrée en vigueur prévue en 2024* [Generalization of electronic invoicing: Postponement of the entry into force planned for 2024] (2023), available at <https://presse.economie.gouv.fr/28072023-generalisation-de-la-facturation-electronique-report-de-lentree-en-vigueur-prevue-en-2024/> (accessed 10 Oct. 2023). France’s Direction Générale des Finances Publiques has floated

system should meet the requirements of the European Commission and the expectations of businesses.²⁰

3. E-Invoice and Its Variants

The idea for taxable persons to submit invoices in a specific format (standard) to the tax administration in real time or close to real time of the transaction is not new and has been used for years in Latin American countries. In Europe, the idea of e-invoicing first made its way in B2G (business to government) relations.²¹ In Poland, the law transposing the E-Invoicing Directive (2014/55/EU) was introduced in November 2018 as the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for construction works or services and public-private partnerships. It has been in force since 18 April 2019.²²

The use of e-invoices in relations between taxable persons outside the public sector required more time. Although the VAT Directive²³ itself allows for the implementation of e-invoices in domestic transactions in an optional form (upon the buyer's acceptance), in order to implement this solution as a mandatory one (regardless of the contractor's acceptance or lack thereof), the EU Member State must obtain consent for a derogation under a derogation decision within the meaning of article 395 of the VAT Directive.²⁴

Italy pioneered work in this area with its implementation of e-invoicing first in an optional form in 2017. Having obtained the consent of the EU authorities, Italy implemented this solution in a mandatory form in B2B relations in 2019.

In Poland, the KSeF is, in a nutshell, a platform for issuing and receiving invoices electronically, and the invoice issued in this system takes a strictly defined form. The KSeF enables issuing and sharing structured invoices, i.e. invoices issued in a specific logical structure in the XML format consistent with the FA(2) e-invoice structure published in the Central Repository of Electronic Document Templates (*Centralne Repozytorium Wzorów Dokumentów Elektronicznych*, CRWDE) on the electronic Platform of

Public Administration Services (*elektroniczna Platforma Usług Administracji Publicznej*, ePUAP).²⁵ Invoice structuring means, above all, unifying and organizing the items shown by the taxable person on the invoice, in particular, indicating them in specific places in the document. Structured invoice data is a new standard contributing to acceleration as well as further automation of the processing of these documents and their automatic archiving.

An e-invoice, unlike other types of invoices sent electronically, is prepared and sent in a specific structure (format) that taxable persons have to implement into their systems. In this sense, an invoice issued in a given country has a specific format and structure – the data on the invoice is ordered and has a uniform nature defined by the legislator (tax administration). Pursuant to article 2(32a) of the Polish VAT Act,²⁶ a structured invoice is an invoice issued using the KSeF with an assigned number identifying this invoice in this system. Therefore, an e-invoice is significantly different from an invoice issued by the taxable person electronically using any software. Anyway, their differentiation obviously also affects the different format or presentation of data on the invoice. Electronic invoices are currently commonly used by taxable persons in domestic and cross-border transactions, but they are not structured invoices (e-invoices) and are neither submitted to the tax administration at the stage of their transmission nor after the transaction is completed.

Despite some common features, internationally there is no single e-invoice model. Countries implement different e-invoicing methods, which is or will be soon a real challenge for businesses operating in several countries.

The first major difference is the method and time of transferring the invoice to the tax administration and the role of the tax administration in the process. It is possible to distinguish countries where an e-invoice (in full or in part, i.e. only certain selected data from the invoice) is transferred to the tax administration after it has been delivered to the customer. This is in fact post-transaction reporting (such e-invoice variant for intra-Community transactions has been proposed, among others, by the European Commission as part of the ViDA legislative package²⁷).

On the other hand, countries introducing an e-invoice requiring that it is transferred to the tax administration before it is received by the customer (in general the Italian system and the KSeF based on this assumption). From the point of view of efficiency and tax analytics, this may be

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 a revised 2026-27 launch date for its mandatory B2B e-invoicing and B2C e-reporting regime. However, this timetable was not confirmed in the 2024 budget Bill which was published on 27 September 2023. So this timetable is likely to shift further. See R. Asquith, *Mandatory B2B e-invoicing & B2C e-reporting potential launch March 2026 to early 2027* (2023), available at <https://www.vatcalc.com/france/france-vat-b2b-e-invoicing-b2c-e-reporting-july-2024-update/> (accessed 10 Oct. 2023).

20. On 4 August 2023, the President of the Republic of Poland signed an act introducing the obligation to issue invoices via the National E-Invoice System (KSeF). PL: Act of 16 June 2023 amending the Act on tax on goods and services and certain other acts, Official Journal (Dziennik Ustaw) item 1598, 2023.
21. Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement, OJ L133 (2014).
22. PL: Consolidated text: Decree of the Minister of Finance of 2020, Official Journal (Dziennik Ustaw) item 1666.
23. Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, OJ L347 (2006), Primary Sources IBFD [hereinafter VAT Directive].
24. "The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance". See art. 395(1) VAT Directive.

25. From 1 September 2023, the FA(2) logical structure replaces the FA(1) logical structure in place until recently. This means that the FA(2) logical structure will come into force during the optional KSeF. This will make it easier for taxable persons to prepare for mandatory e-invoicing from 1 July 2024. See Podatki [Taxes], *Struktury dokumentów XML* [XML document structures], FA(1) and FA(2) (2023), available at <https://www.podatki.gov.pl/e-deklaracje/dokumentacja-it/struktury-dokumentow-xml/#ksef> (accessed 10 Oct. 2023).
26. PL: Decree of the Minister of Finance of 2004, Official Journal (Dziennik Ustaw) item 1570, 2023, consolidated text [hereinafter VAT Act].
27. "The data referred to in Article 262(1) shall be transmitted for each individual transaction carried out by the taxable person no later than 2 working days after issuing the invoice, or after the date the invoice had to be issued where the taxable person does not comply with the obligation to issue an invoice." See art. 263(1) VAT Directive.

a more desirable model, but it needs to be implemented with great care due to the scope of the transferred data, as well as the need for the central system to immediately make invoices available to customers so as to ensure a smooth flow of documents in the economy. This system, in which the tax administration acts as an “intermediary” in the transfer of invoices, is usually referred to as “clearance”. This term is also used by the European Commission,²⁸ although it is not a legal and defined term, and as shown in practice, this term may cover the diverse role of the tax administration in transmitting invoices between suppliers and customers. As a result, a distinction can be made between legal regimes where, as part of clearance, the tax administration examines the correctness of the invoice issued in terms of its substance and decides on its acceptance/transfer (e.g. in Latin American countries) and systems where the tax administration, having received the invoice, verifies it only in terms of its compliance with the scheme (semantic verification). This semantic verification should rather be equated with ensuring that invoices in the system are consistent with the structure, which is to ensure the consistency and “cleanliness” of the system (this variant could be described as “cleaning”). Such semantic validation is carried out by the KSeF.

Although there are many more differences as regards e-invoices, it is worth pointing out one more related to the structure of the system itself. As part of this division, we can identify central (centralized) systems, where a structured invoice goes to one government/ministerial “centre” and it is not possible to transfer the invoice to the tax administration through other intermediaries. The KSeF in Poland is based on a central system. On the other hand, there are decentralized systems, where the tax administration establishes intermediaries (integrators) whose task is to collect and transfer invoices between taxable persons, and then transfer them to the tax administration – this variant is used in, for example, the French e-invoice model which is still under design.²⁹

4. The KSeF – Key Features of the Mandatory Model

4.1. Clearance or not?

The KSeF is a central system; thus it is “involved” in the invoice sending and sharing process. The entry into force

28. For the purposes of the ViDA package, the European Commission emphasizes that in a no-clearance model, the supplier is able to send the e-invoice directly to its customer without having to request any token from the tax authority. In a clearance system, the supplier is required to either (i) obtain a verification token from the tax authority as a pre-condition to send the invoice, or (ii) send the draft e-invoice to a central platform, which in turn delivers (or issues and delivers) the e-invoice to the customer. See European Commission, *VAT in Digital Age, Final Report, Volume 1, Digital Reporting Requirements*(2023), available at https://taxation-customs.ec.europa.eu/system/files/2022-12/VAT%20in%20the%20Digital%20Age_Final%20Report%20Volume%201.pdf (accessed 10 Oct. 2023).

29. The issuance, transmission and receipt of invoices between companies based in France will be done via a platform operated by the tax authorities (Chorus Pro) or via another platform operated by private individuals that will transfer data to Chorus Pro. See France - VAT E-Invoicing and E-Reporting will be Mandatory as from 1 July 2024 (20 Sep. 2021), News IBFD (accessed 10 Oct. 2023).

of a mandatory model means that, with some exceptions, it will not be possible to send an invoice directly from the supplier to the customer, but only through the KSeF. The system introduced in Poland, on which both the optional model and the future mandatory model are based, precisely defines the role of the KSeF in the invoicing process. The role of the KSeF is limited to semantic validation of the invoice – the system is not supposed to control the content of the invoice or reject invoices issued by entities suspected of tax fraud. For example, specifying an incorrect VAT rate on an invoice does not mean that the KSeF will “check” the VAT rate and reject the invoice for this reason. The Polish system can therefore be described as one that is close to – but not exactly – a clearance model.

Verification in the KSeF is carried out in two stages:

- (1) *Verification of the entity*: the KSeF will first verify the entity that has issued the invoice. If an unauthorized entity (without a valid tax identification number) attempts to enter an invoice into the system, the invoice will be automatically rejected and a relevant message (code) explaining the reason for rejection will be sent. If the authorization of the entity as part of the first validation stage is positive, before assigning a unique number identifying a given invoice, will carry out only semantic verification in the second step the system.
- (2) *Semantic verification*: this type of verification is performed only in terms of compliance of the sent file with a standardized template of a structured electronic invoice. The verification will consist in checking the correctness of the file format (e.g. XML) and other fields in which specific information must be provided. For example, it will be verified whether all mandatory fields have been filled in or a field defined as a numeric one contains only numbers and not text. If an error is detected as part of the semantic verification, the file will be rejected and a relevant message (code) explaining the reason for the error will be sent. In order to issue an invoice, the rejected files must be re-entered into the system, correcting the data in accordance with the previously received messages.

A structured invoice is deemed to be issued on the day it is sent to the KSeF. At this point, a tax liability will also arise with respect to services in connection with which the VAT Act links the tax liability with the issuance of the invoice.³⁰ Therefore, it is not the date of the invoice preparation in the company’s financial and accounting system that matters, but the date of its transfer to the KSeF (the system confirms the transfer date practically in real time). Importantly, the introduction of the KSeF does not affect the deadlines for issuing invoices³¹ or the provisions determining the moment when the tax liability arises.

Following appropriate verification, the system will send a notification of the date and time of assigning the

30. The same was stated by the director of the National Tax Information Office, see Poland’s National Tax Information Office, interpretation of 14 June 2022, 0112-KDIL1-2.4012.169.2022.1.PM.

31. Although for the mandatory version, deadlines for transferring to the KSeF invoices issued during periods of failure are introduced.

KSeF invoice identification number (the so-called KSeF number). Upon assigning this number, the e-invoice will be deemed received and will be automatically made available to the receiver (customer) with the option of its reading or downloading. If the e-invoice is to be downloaded, the KSeF will verify the entity authorized to download it. Following positive verification, the e-invoice may be downloaded.

4.2. The KSeF and B2G invoices

E-invoicing in public procurement (in B2G relations) has been used in Poland for several years. The KSeF has been operating as a voluntary model since 1 January 2022, and the B2B and B2G invoicing system is not integrated within the voluntary model. This will change with the entry into force of the mandatory KSeF, i.e. from 1 July 2024. The implementation of the KSeF will affect the existing system for handling electronic invoicing in public procurement using an electronic invoicing platform called *Platforma Elektronicznego Fakturowania* (PEF). An invoice issued in the PEF, following its positive validation, should be assigned a KSeF/UPO (*Urzędowe Potwierdzenie Odbioru*, Official Receipt Confirmation) number and should be made available to the issuer of such invoice in the PEF. The PEF e-invoice standard required by law would remain in circulation between the issuer and the recipient of the e-invoice in B2G transactions. Integrating the two systems in the proposed way will benefit both taxable persons (PEF users) and the tax administration. PEF users will be able to use the services provided as part of the KSeF, i.e. semantic validation of e-invoices, storage of and access to e-invoices in the system, and verification of the correctness of e-invoices. At the same time, the tax administration will have access to all e-invoices, regardless of whether they have been issued according to the PEF standard or the KSeF standard.³²

4.3. Who is covered by the e-invoice?

4.3.1. General rule

As for the mandatory model, a general and key rule that taxable persons are obliged to issue structured invoices using the KSeF has been adopted. Pursuant to the wording of the derogation decision, Poland is authorized to only accept invoices which have been issued by taxable persons established in the territory of Poland in the form of documents or messages in electronic format. Poland is also authorized to provide that the use of electronic invoices issued in the territory of Poland shall not be subject to an acceptance by the recipient.³³ The other EU countries have also obtained a similar scope of derogation decisions with respect to entities involved.

32. Rationale for the draft act introducing the mandatory KSeF, *see* PL: Druk nr 3242 Rządowy projekt ustawy o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw [Form No. 3242 Government Draft Act Amending the Act on Tax on Goods and Services and Certain Other Acts], 2023, SEJM, available at <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=3242> (accessed 10 Oct. 2023) [hereinafter Form 3242].

33. Arts. 1-2 Decision 2022/1003; art. 232 VAT Directive.

4.3.2. Exclusions

First of all, it should be pointed out that, pursuant to the derogation decision, the KSeF may not be mandatory for foreign entities, so it does not apply to a taxable person not established in Poland. However, the obligation to issue structured invoices will apply to taxable persons performing activities subject to the invoicing requirement pursuant to Polish VAT regulations, who, despite having their registered office outside Poland, have a fixed establishment in Poland and this fixed establishment is involved in the supply of goods or the provision of services in the territory of the Republic of Poland.

Another important exclusion from the KSeF is that of consumer (B2C) invoices. Following the comments submitted during public consultations, invoices issued to natural persons who do not conduct business activity are excluded from e-invoicing. The identification of such invoices while not showing them in the KSeF is very important but at the same time a challenge for taxable persons.

Exempt businesses (VAT exemptions for small enterprises³⁴) or those performing only activities which are exempt for VAT purposes will be obliged to use the KSeF, but only from 1 January 2025. This is to ensure better preparation of such enterprises for the KSeF and results from numerous demands put forward during public consultations.

The remaining exemptions relate to specific types of transactions and will be included in the Implementing Regulation. This relates to the planned exemption from the e-invoicing obligation of train and air tickets, payments for motorways and documenting the provision of air traffic supervision and control services (Eurocontrol).³⁵

4.4. Transactions covered by the KSeF

As indicated above, mandatory e-invoicing will cover basically those activities that currently require to be documented with an invoice issued pursuant to the VAT Act. The mandatory system also introduces the general rule to issue invoices through the KSeF, therefore the permission by Polish law to issue invoices in certain situations using cash registers must inevitably be repealed. However, having regard to the need for the market to adapt to this change, this restriction will be introduced from 1 January 2025, i.e. with a six-month extension of application.

The same rule will also apply to cash register receipts with a tax identification number (NIP) up to PLN 450 (or EUR 100), as well as other simplified invoices issued in paper or electronic form, that will still be considered as simplified invoices for six months from the date of entry into force of the amendment of the VAT Act. Such receipts and other simplified invoices will not be considered as invoices from 1 January 2025.

Correcting invoices will also be issued using the KSeF. Correcting invoices issued after the entry into force of

34. Current threshold in Poland is PLN 200,000.

35. *See* Form 3242 for the rationale behind the draft act introducing the mandatory KSeF.

the Act³⁶ will have to be issued in the KSeF, regardless of whether the original invoices were issued through the KSeF or outside this system (due to the fact that they had been issued before the provisions on mandatory e-invoicing entered into force), if they are issued by a taxable person having its registered office or fixed establishment in Poland (in the latter case: if this fixed establishment is involved in the transaction). It will be possible to use the KSeF to issue (optionally) also VAT RR invoices and VAT RR KOREKTA correcting invoices (invoices with respect to the flat-rate system for farmers).

From 1 July 2024, it will not be possible to issue correcting notes by customers either in the KSeF or outside this system. Correcting notes are documents issued by customers correcting, in particular, contact details on the invoice. They require acceptance of the insurer of the invoice and may not relate to “hard” transactional data, such as the VAT rate. In practice, due to the increasingly common use of various types of software, the risk of including, in particular, incorrect details of the customer has significantly decreased in recent years. Financial and accounting systems usually load the customer’s details from official databases, thus significantly reducing the risk of error. The decision to suppress correcting notes results from comments made during public consultations on the draft, in which entrepreneurs indicated the redundancy of such solution and the ensuing unnecessary administrative burden. Following the changes, regardless of the reason for the need to change the data on the invoice, only a correcting invoice will be issued. At the same time, it should be expected that the introduction of e-invoicing and the development of the process of digitization of taxable persons’ settlements will contribute to a general improvement in the quality of data entered on invoices, that until now, due to errors, had to be corrected based on correcting notes issued by customers.

4.5. The KSeF – Business and tax benefits and adaptation costs

In order to adapt to the KSeF, taxable persons may incur costs resulting from the need to reorganize their invoicing and communication processes.³⁷ However, in the author’s view, the KSeF brings a number of business and tax benefits that in the long run will compensate for many costs and effort related to the organization’s adaptation to the KSeF requirements. The KSeF ensures above all the standardization of invoices as well as faster and better communication. In the Polish literature it is rightly emphasized that equipping tax departments with new tax tools will eliminate repetitive and tedious activities in tax processes, which in turn will make it possible to transfer the thus obtained resources to areas related to the preparation of tax data and metadata defining its context for the pur-

36. Act of 16 June 2023, *supra* n. 20.

37. The smallest companies issuing a small number of invoices may avoid costs if they use free tools offered by the Ministry of Finance. See Podatki [Taxes], *Aplikacja Podatnika KSeF i inne narzędzia* [KSeF Taxpayer Application and other tools], available at <https://www.podatki.gov.pl/ksef/aplikacja-podatnika-ksef-i-inne-narzedzia/> (accessed 10 Oct. 2023).

poses of settlements and verification of the compliance of data with tax law. The introduction of the mandatory circulation of invoices via the KSeF should in all likelihood lead to a situation where the technological backwardness of tax areas will become a thing of the past.³⁸ Using e-invoices will eliminate the need to rewrite data from a paper document to the system (or use optical character recognition (OCR)³⁹) and thus reduce human errors.

There are many more business benefits associated with the introduction of the KSeF. In this article the author would like to focus on tax benefits.

First of all, a taxable person using the KSeF who applies for a refund of input VAT will receive this refund faster. The maximum standard repayment period is shortened from 60 to 40 days, which will have a positive impact on financial liquidity, especially in the case of small and medium-sized enterprises.

Second, the KSeF enables easier and faster correction of invoices once the taxable person has issued a correcting invoice in the form of a structured invoice, without the need to communicate with the customer.

Third, taxable persons will not have to issue duplicate invoices, because e-invoices in the KSeF will not get lost, will not be destroyed, and will always be available to the issuer and recipient of the invoice. Moreover, the taxable person issuing invoices in the KSeF obviously will not have to send the separate structure with the set of invoices (*Jednolity Plik Kontrolny dla Faktur*, JPK_FA) at the request of the tax authorities.

Finally, the KSeF ensures the authenticity of the origin, the integrity of the content as well as the legibility of a structured invoice, and the obligation to store invoices rests with the tax administration; invoices will be stored in the KSeF for a period of ten years counting from the end of the year in which they were issued.

5. Conclusions

Poland is the second EU Member State following Italy to introduce a mandatory invoice in B2B transactions. This is the biggest change in the VAT system since Poland’s accession to the European Union in 2004. It is a legal change that deeply interferes with economic processes related to documenting business transactions. However, this project has been consulted upon extensively with the market, especially with representatives of accountants and tax advisers, developers and IT experts. The KSeF is a legal and technological project that requires – both from

38. D. Nalazek, R. Mularczyk & R. Berliński, *Krajowy System e-Faktur – kolejny uciążliwy obowiązek raportowy czy miły krok w kierunku cyfryzacji procesów zarządzania ryzykiem podatkowym?* [National e-Invoice System – another burdensome reporting obligation or a milestone towards the digitization of tax risk management processes?], *Przegląd Podatkowy* 5, sec. 38 (2023).

39. OCR is a technology that uses advanced algorithms to recognize characters in a digitized file. The benefits in this area related to the implementation of the KSeF can also be found in the literature. See A. Palys, *Krajowy System e-Faktur (KSeF) w praktyce – studia przypadku* [National e-Invoice System (KSeF) in practice – case studies], *Przegląd Podatkowy* 7, sec. 14 (2023).

the tax administration and taxable persons – cooperation of many specialists from various fields, often speaking a “different language” and analysing processes taking place in the economy and business from different points of view.

Admittedly, e-invoicing and compliance with the KSeF requirements pose a major challenge in terms of compliance for taxable persons, not only because of the related significant adaptation costs, especially in large and complex organizations, but also because of the need for holistic thinking about business and its organization in order to implement the opportunities offered by the KSeF in the best possible way. However, the KSeF should offer significant business and tax benefits that, in the long run, will compensate for the considerable effort put into the implementation of this solution. This is an opportunity to digitize business transactions and further digitize the

tax administration. It will also make communications between the taxable person and the accounting office more efficient, while saving time. The KSeF will have a positive impact on reducing payment backlogs and will also make business relations more transparent. At the same time, it should be emphasized that access to the KSeF data is restricted and subject to specific procedures.

Finally, from a Treasury perspective, the KseF will enable the tax administration to analyse invoices practically in real time and, above all, access data of unprecedented quality and transparency.

The KseF itself also ensures the possibility of ongoing monitoring of transactions and thus reduces the need for the tax administration to carry out controls on businesses.



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