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A Polish-English quarterly where experts from KPMG in Poland share their professional expertise in audit, taxation, as well as strategic, operational and legal advisory services.

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Experts contributing in this issue

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Michał Miedziński
Assurance services are a way of reducing risk and increasing reliability in a company’s integrated reporting.

Historical financial information on a company, such as the value of assets, liabilities, revenues, earnings and cash flows from operating activities, are not sufficient for investors, regulators, contractors or employees (key stakeholders) to make informed and rational decisions. Undoubtedly, these are elements that are useful in assessing the effectiveness of a business and its managers, but they do not provide a sufficient basis for multidimensional, forward-looking analysis. An essential element of an analysis is often an assessment of the effectiveness of a company in implementing a chosen strategy. As a result, information about the further development of a company, future earnings as well as the risks involved and the management model constitute a source of building the true and long-term value of a company. On the other hand, managers are averse to publishing financial forecasts and other statements regarding their company’s future fearing that they will become promises that the company cannot guarantee. However, market pressure forces changes, and entities for which external communication is critical are attempting to expand the scope of the information they publish. What, then, in the context of these changes, will the reporting of these companies look like in the future?

Trends

For several years now, a trend has been observable in Poland of providing key stakeholders with more data and information than just financial, allowing them to build reasonable expectations as to the future activities of a company and its earnings. This is consistent with another business philosophy in which value expressed in money is not the only objective of a modern business. Businesses today are increasingly turning their attention to the aspect of sustainable development and building and implementing strategies in a socially responsible way. Protecting the environment, reducing carbon emissions, energy efficiency, job security and supporting local communities are just some of the objectives of CSR that are increasingly part of a company’s business strategy.

Including in annual reports information and data on corporate social responsibility has become a permanent global trend. According to the latest survey by KPMG, currently 3 out of 5 of the largest multinational corporations included in their annual reports data on corporate social responsibility, while

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1 The KPMG Survey of Corporate Responsibility Reporting 2015 – a survey carried out in 45 countries on the basis of reports published in the period from mid-2014 to mid-2015. The analysis included 4,500 companies in the N100 group of national leaders in terms of revenues.
only 1 in 5 did so in 2011. The largest companies set best practices through their external communication, which are then replicated by national leaders and medium-sized enterprises. Among the world’s largest companies, the G4 Sustainability Reporting Guidelines developed by the Global Reporting InitiativeTM2 are most often applied.

Principles and scope of integrated reporting

The International Integrated Reporting Council3, which is a global coalition of regulators, investors, companies, organisations creating standards, professional accountants and NGOs, guided by a common vision for the development of corporate reporting, has developed guidelines covering the principles and scope of integrated reporting. The primary objective of integrated reporting is to explain to stakeholders how an organisation creates value. Integrated reporting therefore includes not only financial but also non-financial information, including that relating to the future. The basic elements and how they relate to value is presented in Figure 1.

Expanding the scope and complexity of published data, its meaning and application to assessing not only the historical performance of a company, but also to giving an informed opinion on future market opportunities, challenges, risks and threats facing a company and its management, reinforces the need for greater transparency and the reliability of information that is disclosed. This need expressed by a wide range of stakeholders, i.e. investors, financing institutions, regulators, customers, suppliers and employees, is met by KPMG through its assurance services for all critical financial and non-financial information. These services, just like with audits and reviews of financial statements, are carried out by teams that have skills and experience in an industry and apply the appropriate methodology in line with national and international standards such as the International Standard on Assurance Engagements 3000.

Figure 1: The use of integrated reporting elements and their impact on the creation of value

Source: study by KPMG

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2 globalreporting.org
3 theiirc.org
Assurance services, in addition to reporting to external stakeholders, also include areas such as:

- confirming the amount of capital expenditure incurred in connection with privatisation agreements
- verification of the correctness of the calculation of bank loan covenants
- confirmation of compliance with the provisions of agreements
- confirmation of the proper functioning of internal control systems
- analysis of merger, division or transformation plans
- confirmation of the eligibility of costs financed from public funds (e.g. from EU subsidies).

Observing the experience of the more mature markets of Western Europe and Anglo-Saxon countries, it can be stated that the range of assurance expected by auditors in the form assurance services is very extensive. Also in Poland, we are seeing increased interest in assurance services that cover a wide range of disclosures, statements and reporting, but also actions. Independent experts with appropriate expertise and methodology can be found wherever they are needed. Audit firms such as KPMG participate in this process by encouraging the effective and sustainable functioning of businesses and the entire economy.

Selected example areas of assurance services

The areas of assurance services that are important for all groups of recipients of information contained in financial and non-financial forecasts include contract compliance, KPI compliance, assurance on internal controls, IT system compliance and financial and business modelling assurance.

Table 1: Selected areas of assurance services

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<th>Assurance area</th>
<th>Description</th>
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<tr>
<td>Contract compliance</td>
<td>This is used in practically every area and sector of business. It is important in contracts for services in which the parties undertake to provide services under a strict standard (e.g. dealership sales in the automotive industry), the fulfillment of specific requirements (e.g. the employment of appropriately qualified staff and ways of remunerating employees or subcontractors according to established criteria in the construction industry) or they provide for fixing remuneration in reference to parameters and data that are not fully known to both parties to the agreement or require independent verification (e.g. the amount of rent dependent on the revenue achieved by a tenant in the property sector).</td>
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<td>KPIs assurance</td>
<td>It is used wherever the results are presented of calculations of certain financial financial and non-financial parameters that may be the basis for evaluating the accuracy or effectiveness of a company and/or its management (e.g. reporting the achievement of objectives entrusted to the management of a company by supervisory boards and owners, which form the basis of evaluation and remuneration).</td>
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<tr>
<td>Assurance on internal controls</td>
<td>This means the verification of internal control systems such as the COSO framework (relevant for organisations with shared service centres).</td>
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<tr>
<td>IT compliance system</td>
<td>This includes the compliance of ERP financial and accounting systems with accounting, corporate income tax and VAT regulations. It takes place mostly in situations in which a global IT system was implemented in a subsidiary and during the design phase it was not verified for compliance with national requirements.</td>
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<tr>
<td>Financial and business modelling assurance</td>
<td>This means the independent verification of the correctness and accuracy of calculations and the consistency and security of financial models used as a source of critical business decisions in restructuring, acquisitions and mergers, obtaining financing, analysis of the value of a company and the risk of its loss.</td>
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Source: study by KPMG
modelling assurance. Selected areas of assurance services are discussed in detail in Table 1.

Assurance services as a source of significant added value for a business

Assurance services can provide greater reliability of data and information in external communication (as mentioned at the introduction of services for integrated reporting) and greater transparency of relationships between parties to a transaction (for example, contract compliance). At the same time, the added value that results from verification made by an independent expert for the management of a company cannot be denied (e.g. verification of an internal audit into purchasing, or the correctness of financial models that underpin investment decisions). All of these benefits clearly indicate that assurance services are a source of significant added value for a company.

Zbigniew Libera
Auditor, FCCA, CIA, Partner in the General Audit Department, Head of the Gdansk office of KPMG in Poland

- responsible for the development of assurance services at KPMG in Poland
- he audits separate and consolidated financial statements prepared in accordance with Polish and International Financial Reporting Standards mainly from the industrial sector
- since 2006 he has been a member of the Capital Market Group – a team of employees responsible for serving clients preparing for IPO and the preparation of the prospectus
- in 2005-2007 he was part of the Polish Professional Practice Desk (internal consulting department) – the unit responsible for supporting other employees of KPMG specialising in IFRS, including their first implementation and issues related to the preparation of a prospectus and the financial reporting of public entities
- in 2000-2002 he worked at KPMG in London in the department dealing with audits of financial statements of companies in the energy, chemical and pharmaceutical industries, analysing companies listed on the LSE
- with KPMG since 1996
Financial institutions are more open to finance real estate investments

The sixth edition of the KPMG survey, conducted among more than 90 financial institutions in 21 countries in Europe, indicates significant progress in financing real estate investment and development projects by banks. They are ready to finance investment projects with a solid business model that lead to the creation of high-quality assets. In Poland banks continue to view property lending as a reasonably safe sector, and are typically willing to finance up to 70% of the fair value of income generating properties. For the first time since 2010, retail properties overtook office properties as the preferred asset class for development financing in Poland.

Improved business sentiment in financing

Overall, the economic conditions have become more favourable in Europe since last year with an improved outlook and less restrictive business sentiment. 2014 was a turning point in Europe since the onset of the global financial crisis. It saw both economic growth and the long-awaited boost in most of the real estate markets. Even though there are positive improvements in bank financing, it is considered to be still tight in comparison to the pre-crisis level. Representatives of leading financial institutions surveyed by KPMG have provided their views on the key issues affecting property lending.

The economies included in the study were divided into the following categories:

- dominant [Italy (ITA), Germany (GER), Spain (ESP), United Kingdom (GBR)]
- established [Poland (POL), Austria (AUT), Czech Republic (CZE), Netherlands (NDL), Slovakia (SVK), Sweden (SWE)]
- other – less stable [the Baltic states (BAL), Bulgaria (BUL), Croatia (CRO), Cyprus (CYP), Greece (GRC), Hungary (HUN), Romania (ROM), Serbia (SBR) and Turkey (TUR)].

This year’s edition of the survey indicates that the lending sentiment among banks in general has improved and they are becoming more open to finance real estate projects. They
realized that they need to overcome their difficulties if they want to keep their market share as the market gets more competitive and alternative lenders become more active. The current macroeconomic environment with record low interest rates and greater availability of financing, both from banks and alternative lenders, made real estate investments more appealing to investors. As a consequence, transaction volumes have been significantly increasing, leaving less quality prime products in the market.

Increasing number of impaired loans

The global economic crisis had a serious impact on the financing of the real estate sector. During the years of the crisis the proportion of impaired real estate loans were increasing in Europe, especially in those less established peripheral markets where the majority of loans were denominated in foreign currency. The depreciation of local currency and declining economic conditions resulted in an increased proportion of impaired loans. We asked banks their proportion of impaired loans, where there is a technical breach of contract (minor impairment).

Source: Report KPMG CEE “Property Lending Barometer 2015”
or where borrowers cannot pay their capital and/or interest on time (serious impairment). With the exception of Spain, banks operating in the dominant and established economies indicated a higher proportion of fully compliant loans (73-99%) compared to less established markets.

**Restructuring as an opportunity to manage impaired loans**

The majority of the bank representatives interviewed still think that through restructuring they can successfully manage the majority of their impaired real estate loans. On average banks indicated that approximately 60% of their impaired loans may be managed through restructuring. The answers suggest that rescheduling or restructuring of loans is still a preferred approach by banks to manage problematic loans. While banks in Poland had a high proportion of compliant loans, with 88% of loans fully compliant, the majority of non-compliant loans suffered from serious impairment.

**Cooperation is the key to successful restructuring**

Overall, banks’ answers remained consistent with those of last year in the case of the most important criteria regarding successful restructuring. The primary precondition for any restructuring is a co-operative behaviour on the part of the borrower. If this condition is fulfilled then banks consider the business model and the quality of the asset as the most important criteria when it comes to restructuring. The availability of additional equity remained the third most important factor during a restructuring.

**Strategic importance of real estate financing**

Based on banks’ feedback in general, real estate financing is now strategically more important in dominant and established economies; in Poland banks stated that real estate financing has high strategic importance. As expected in some of the less established other economies such as Hungary, real estate financing had low strategic importance for banks. The focus of real estate financing within banks’ lending activities generally is similar compared to one year ago, with the exception of the dominant economies, where the majority of the banks stated the focus had increased.

**New financing**

Banks in dominant and established economies are more open to financing real estate projects, especially income-generating projects. Nevertheless, banks in most of the markets show some extent of openness for financing income-generating projects. Poland and Serbia were the only two countries where banks indicated a preference for financing new developments, albeit by a very small margin.

**Asset class preference**

Banks in each of 21 countries were also asked about their preferred asset class for development financing. Taking the average of the indicated priorities, residential is the most preferred asset class among the surveyed banks both in the dominant and in the established
economies. The second most preferred asset class is the retail sector followed by office space and industrial space in both market groups. The most favoured asset class among banks operating in less established economies is office space followed by the retail, residential and industrial sectors. In Poland, for the first time since we started the survey in 2010, retail projects overtook office projects as the preferred asset class for development financing. Lending for office development is becoming less attractive in Poland due to the large quantity of new office space being delivered to the market and the increasing vacancy rates in the office sector.

Criteria for financing
Most of surveyed banks, regardless of their country, size or risk profile of the market, agreed that a strong business model and the quality of the asset are most important criteria for obtaining financing of the project. In case of dominant (Italy, Germany, Spain and United Kingdom) and established

Chart 2: Banks’ sector preferences in providing development financing by asset class

Note: the longer the coloured bar, the more preferred the asset class is for the banks.

Source: Report KPMG CEE “Property Lending Barometer 2015”
When questioned about loan-to-cost and loan-to-value ratios, responses varied by country and asset type. Interestingly banks generally required higher equity contributions (i.e. required lower LTC and LTV ratios) from dominant economies than from established economies. In Poland banks were willing to lend up to 69% of the cost of development of office, residential and retail projects compared to an average of 65% in Germany, the United Kingdom and Spain. The exception being residential, where in Germany investors could borrow up to 77% of the cost of new residential developments compared to 69% in Poland. The situation was similar for income-generating properties, for which lower owner contributions were required in Poland than in the United Kingdom, Italy and Spain. Germany was the only country of the dominant economies that permitted higher LTV ratios than Poland. In almost all countries in dominant and established economies, hotels required the highest level of owner’s equity. In the other economies, banks generally required higher owner equity for real estate projects.

Pre-let ratios
The pre-let expectations of banks also vary greatly across countries and sectors. In general, the tendencies have remained similar to last year,
which means that, on average, pre-let ratios for the office and retail sectors are lower in most of the markets compared to the industrial sector. The answers suggest that banks are less open to speculative developments of industrial properties. Also it is more common in the industrial segment to develop properties according to a “build to suit” concept, which means that the property is pre-leased to a tenant. Pre-let requirements for Poland were similar to the requirements in the dominant economies.

**Debt service coverage ratios (‘DSCR’)**

Surveyed banks indicated a wide range of DSCR expectations even within the country groups. Interestingly, banks in Germany, the Netherlands and Sweden require higher DSCR ratios compared to their peers, especially in the case of industrial and hotel asset classes. The DSCR expectations of Polish banks were among the lowest of the countries surveyed, especially in relation to office and retail projects.

**Conclusion**

In general, financing conditions have generally become more favourable in comparison to previous years. In Poland there is a shortage of investors borrowing from banks to acquire or development high quality real estate projects, making it more difficult for banks to maintain or increase their market share. This problem is compounded by increasing competition from alternative lenders. This situation has benefited borrowers, as it has resulted in a decrease in loan interest rate margins and good availability of financing for quality real estate projects.

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**Steven Baxted**

Partner, Head of Building, Construction & Real Estate Industry at KPMG in Poland

- head of the Real Estate and Construction group in Poland and a member of the Central and Eastern European KPMG Real Estate Steering Committee
- more than 20 years of experience with KPMG providing Audit, Acquisition/Disposal and other attestation services to clients
- responsible for the publications the “Property Lending Barometer” and “The Luxury Real Estate Market in Poland”
- tweets on construction and real estate on @SBaxterd_KPMG
- works at KPMG in Poland since 1999 and previously in Canada from 1993
Tax regulations amending the Tax Ordinance Act in 2016

The new rules for provision of advance tax rulings, the new rules for charging interest on tax arrears, introduction of the principle of the benefit of the doubt in the taxpayer’s favour, proxy and service of notice in proceedings before the tax authorities, the changes in the organisation of the fiscal apparatus and the National Tax Administration Action Plan for 2016 – these are the key regulations on the taxpayers’ agenda for the year 2016.

Need for changes

Urgency of the need for changes in the system regulating the rights and obligations of the taxpayers and in the related operational rules for the tax authorities has increased over the recent past. This is mainly driven by the need to have a legally mandated balance between the public interest and the interest of the taxpayer and by the conviction that the existing regulations – resting on the Tax Ordinance Act that had been amended all too many times – require a revision and a system-wide clean-up. Aspirations to achieve that were expressed through appointment in 2014 of the General Tax Law Codification Commission, with the task of preparing a new bill intended to replace the currently prevailing Tax Ordinance Act.

Changes in the Tax Ordinance Act will not redefine the system

It should be made clear that, with the exception of the introduction of the general rule ordering the interpretation of doubtful cases while taking into account “the interests” of both the parties of the legal-tax relationship, and particularly of the weaker party, i.e. the taxpayer, the present changes in the Tax Ordinance Act do not constitute anything like a comprehensive reworking or redefinition of the tax system.

The primary purpose of the amendment, as clearly stated in the rationale of the 10 September 2015 Law amending the Tax Ordinance Act and certain other acts, is to establish a legal framework that would rationalise and streamline the fiscal procedures. By design, the amendment is only intended to complement the existing legal regulations, this in order to standardise the interaction between the taxpayers and the tax authorities. What is more and what seems to be the legislator’s ultimate goal, the amended law aims to ensure more effective collection of tax liabilities.

Many of the changes will concern institutions of advance tax rulings

The regulatory changes becoming effective in 2016 will, among others, permit application for provision of an advance tax ruling by two or more taxpayers in identical circumstances or expecting to participate in the same future event. This change will be clearly beneficial for the taxpayers as it will help avoid situations in which the competent authorities issue differing and sometimes contradictory interpretations in respect of an identical event (e.g. on the basis for taxation of the buyer and the seller in a transaction). A certain novel solution is to regulate for situations in which an application for an advance tax ruling coincides in its content with a previously issued general ruling. In such a case, instead of providing an individual advance tax ruling, as before, the competent authority will limit itself to providing the reference to an earlier ruling of the Minister of Finance. Another change benefitting the taxpayers applying for an advance ruling is their new right to...
demand at any time a telephone or e-mail notification of the date on which the individual advance ruling requested by them would be issued and on the assessment of their position included there or on another outcome of the case.

New solutions

The Tax Ordinance Act amendment coming into force in 2016 also introduces new solutions intended to incentivise the taxpayers to self-initiate adjustment if they had previously declared an understated amount of tax liability or an overstated amount of the tax refund or an overstated amount of input tax to be repaid. In the case of such a self-declared adjustment and payment of the understated amount of tax liability, the interest on tax arrears would be reduced to 50% of the base rate, however, only if such an adjustment is filed before it is identified by the competent tax authority and the due tax amount is paid within seven days of a given adjustment filing. In turn, in the case of the VAT and excise duty tax persons, i.e. the tax titles of the highest tax revenue importance, failure to file an adjustment prior to initiation of a tax audit or proceedings would result in an increase of the penalty interest to 150% of the base rate if the understated amounts of tax liability are significant.

Summary

The changes discussed in this article represent only a part of the new regulations which await the taxpayers in the year 2016. These will also include changes in the powers of attorney conferred for purposes of the relationship between the taxpayers and the tax authorities. The number of the introduced amendments is extensive. Even if they are not revolutionary in character, they most certainly require detailed analysis from the standpoint of their relationship to and/or impact on the conducted business operations.

Peter Kay
Partner, Head of Tax and Legal Advisory Department at KPMG in Poland and Central-Eastern Europe

- he manages tax advisory projects for prominent firms operating in the Polish market. The projects address financial, tax and economic issues and focus on the financial sector firms in particular
- responsible for preparation of tax reviews for potential company buyers and for advisory on financial, tax and commercial issues to international firm commencing their operations in Poland
- he advises clients in corporate restructurings (recombinations, mergers and acquisitions)
- amassed over 24 years of international experience in advisory to firms of various industry sectors (having worked, among others, in the United States, Canada and Hong Kong) and execution of tax reviews, particularly in respect of CIT and VAT
- Member of the American Chamber of Commerce in Poland, he represents many American investors before the Polish tax authorities
- graduate of the City University of New York (diploma in Accountancy and Information Systems), Member of the American Institute of Certified Public Accountants
- his sectoral experience covers such industries as financial and property
- with KPMG since 2001

Mirosław Michna
Partner, Head of Tax Advisory Department of KPMG’s Cracow Office

- specialising in tax advisory covering Corporate Income Tax, Value Added Tax and Personal Income Tax
- he advises Polish and international companies offering ongoing advise to enterprises of the automotive industry and the manufacturing sector at large as well as advisory support to the business entities operating in the Special Economic Zones
- he represents clients in tax and fiscal as well as the judicial and administrative proceedings
- amassed 20 years of experience in tax advisory services
- he managed multiple projects concerning the international tax law and Mergers & Acquisitions (including Due Diligence projects), and advised in many privatisations and reorganisations of capital groups (recombinations, mergers, breakups and demergers, capital tax groups)
- licensed tax advisor, graduate of the Jagiellonian University Faculty of Law and Member of the State Examinations Commission on Tax Advisory Matters
- his sectoral experience covers such industries as automotive and energy
- with KPMG since 1997
Draft of New VAT Law Introduces Significant Changes for Entrepreneurs

The draft of the VAT act of 15 September 2015 proposes the implementation of a completely new legal instrument instead of the traditional amendments to the current legislation. With over four hundred articles, the draft largely repeats the current regulations, but it introduces a new classification, revised definitions, and a number of solutions that have a significant impact on the business environment. The most important of those changes include the introduction of split payments, a new taxable transaction on tax benefits gained, and new VAT refund deadlines.

The fight against fraud
The draft of the new VAT Act (“the Draft Law”) proposes legislative solutions designed to tighten the system of tax collection. The Draft Law introduces a general principle according to which taxpayers-purchasers are liable for their tax arrears jointly and severally with suppliers in the portion of the tax proportionately attributable to the action made in favour of the taxpayer.

This amendment will result in a significant increase in tax risks for entrepreneurs purchasing goods and services from taxpayers. For those who would like to avoid the joint and several liability, the Draft Law envisages the introduction of the so-called split payment, whereby the purchaser pays the supplier the amount corresponding to the net value of the purchased goods or services, whereas the VAT amount is paid to the counterparty’s special account which is under the supervision of the tax authority (the number of the seller’s separate bank account will be registered in the Central Register of Taxpayers and made public). The suppliers who apply the procedure of split payment will receive effective payment only in the net value of sold goods or services. They will be able to use the amounts accumulated in the special account only to pay VAT, while they will be able pay other taxes and expenses from that account only after obtaining consent of the head of the tax office. Consequently, this mechanism will deprive taxpayers not only of a significant part of the funding for their business activities, but also of control over part of their own money in the special account. So under the Draft Law, the avoidance of the mechanism of joint and several liability will pose for taxpayers a significant risk of deteriorating their financial liquidity.

The tax benefit is subject to VAT
The Draft Law introduces a new taxable transaction, i.e. obtaining a VAT benefit which reduces output tax or increases input tax in the current year or in the next five fiscal years. Taxpayers would be required to submit information on business operations that result in obtaining a tax benefit exceeding a specified amount. Failure to submit mandatory information or providing
false tax information submitted voluntarily will result in imposing a 46-percent VAT rate on the tax benefit. Regardless of doubt as to the definition of tax benefit, serious concerns are raised with respect to the compatibility of the provisions with the EU regulations.

**Summary**

It can be expected that as a result of legislative work, the new regulations will eventually differ from the presented draft law. However, it can be said with a high degree of certainty that entrepreneurs will be forced to look at their settlements and applied business models from a totally new perspective. All the more so in view of the fact that the proposed rules generally exclude the possibility of applying for individual interpretations with respect to VAT and interpretations obtained so far lose their protective power.

**Stricter VAT deduction and refund regulations**

Under the Draft Law, taxpayers will have the right to deduct VAT provided that there is a close relation between input tax and transactions giving right to deduction, and provided that the purchase of goods and services is correctly documented by the purchaser and the issuer of the invoice. The Draft Law introduces new deadlines for VAT refund, as well as additional conditions for the refund above a certain amount, e.g. it introduces the obligation to submit a list of suppliers and documentation for refunds in excess of 1 million PLN.

**Penalties – overstatement of input VAT or understatement of output VAT**

The Draft Law restores the sanction of an additional tax liability amounting to 30% of the understatement of output VAT in the case of failure to declare or incorrect declaration of VAT. The sanction would grow to 40% of the amount of the overstatement of input VAT if the taxpayer uses an invoice issued by a non-taxable person or the invoice states an incorrect VAT amount.

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**Tomasz Grunwald**

Partner in the Tax Advisory Department, Head of the VAT Team at KPMG in Poland

- specialising in advising on indirect taxation and tax litigation
- qualified tax adviser (member of the National Chamber of Tax Advisers in Warsaw since 1997) and attorney-at-law (member of the Warsaw Bar Association since 2005), a graduate of the Faculty of Law and Administration at Warsaw University
- Member of the Tax Council of Konfederacja Lewiatan (Polish business organisation), the European Network of Tax Advisers, and member of the State Examination Board on Tax Advisory in the years 2009-2014
- 15 years of experience at KPMG in Poland, head of the team of VAT advisers
- over 20 years of professional experience, including leading dozens of tax inspection and court proceedings as an attorney, conducting a series of tax reviews and due diligence tax projects related to mergers and investments of foreign entities in Poland
- his sector experience includes industries: tobacco industry, household goods, retail and wholesale sales
- author of several publications on tax law and a regular commentator on tax events for Polish newspapers, radio and television
- participated in the preparation of VAT reform in the Ministry of Finance and the implementation of EU law related to Polish accession in 2004
- in 1994-1999 he worked in the Indirect Taxation team at Ernst&Young
- with KPMG since 1999
The impact of “global tightening” on tax management in enterprises

International public debate on tax avoidance and transfer of profits to tax havens covers, among other things, the adoption of BEPS measures by G20, establishment of the Special Committee on Tax Rulings (TAXE) by the European Parliament, restrictions on the application of tax exemption for dividends between EU companies, as well as local regulations of individual countries. Polish and foreign tax authorities, administrative bodies, the media and the public focus largely on the “reality”, “factuality”, or “veracity” of economic transactions that may lead to reduced taxation. These issues affect the role of the chief tax officer (CTO), whose job used to focus primarily on ensuring compliance of tax returns with the law, whereas today it includes communication with various groups of stakeholders and public relations.

The high status of preventive measures – consensus required

Tax avoidance and transfer of profits is a serious international problem, as important as organised crime or even terrorism. It is evidenced by the fact that the problem solution requires a consensus between countries which often find it difficult to reach a common position in other areas, such as policy, economy, or trade. Representatives of the United States, Russia, China, Japan, Argentina and the United Kingdom have presented a unanimous position on the issue of “global tightening”.

Provisions of the BEPS action plan (Base Erosion and Profit Shifting), or the OECD plan containing 15 actions to be taken in order to prevent fraudulent tax evasion and transfer of profits between countries, have been implemented at an unprecedented rate in the history of international cooperation. Preliminary arrangements were made in July 2013 and the action plan covering all 15 areas was ready in October 2015. The high rank of the issue and the unprecedented political support it received can be evidenced by a comparison of this high rate with the time required to develop many, even relatively simple directives in the European Union alone.

Actions on the European level

Despite being part of the G20, the European Union has not remained idle taking similar action on its own. Prompted by an investigation by investigative journalists that unearthed the so-called LuxLeaks financial scandal, the European Parliament set up the Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE). The Special Committee on Tax Rulings was to determine if the governments of the EU Member States created such operating conditions for multinationals that could negatively affect competitiveness by offering tax preferences. In retrospect, one can say, however, that not all committee activities were fortunate – for example, suspicion was aroused by the number of tax interpretations issued in Poland (most likely due to terminology convergence after the translation of the term into English as tax rulings). All these led to audits of several international companies.

At the same time, the European Commission initiated investigations that led to the recognition of certain tax preferences granted by Luxembourg and the Netherlands as unlawful state aid. As a result, two companies must return multimillion-dollar amounts. Several more investigations are in progress.

The European Commission is also drafting a plan of fair and effective taxation, including the transparency package, automatic exchange of tax information, and – ultimately – a common consolidated corporate tax base.
Businesses must take into account the social perception

The above list does not exhaust the catalogue of all the activities initiated – together or separately – by tax administrations in a number of countries, including Poland.

It should also be noted that businesses must take into account the social perception of their actions, particularly in the area of taxation. The actions of multinationals in some countries that drew attention of the European Commission have caused a series of protests, including boycotts in social media or mocking memes published on the Internet. In Poland, social protest was sparked when a clothing company transferred its trademarks to the UAE at the beginning of 2014. For that reason corporate social responsibility is a much broader issue relevant in today’s market environment that covers also other actions apart from popular donations to orphanages or “think before you print” notes at the bottom of an email.

“Global tightening” and challenges for tax advisers

CFOs and CTOs of both large international conglomerates and domestic, or even family companies are facing a number of challenges today (See Figure 1).

A competent accountant is definitely not enough for modern tax management today. Given the fact that tax policy is one of the central points of the economic policy of the state, tax management for organisations’ owners and boards should be a key area of attention, along with HR, sales, production, and marketing.

Figure 1: “Global tightening” and challenges for tax advisers

<table>
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<tr>
<th>Solving local tax problems</th>
<th>Taking into account the global aspect of local transactions</th>
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<td>Proposing solutions and structures</td>
<td>Assessment of “substance”</td>
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Source: KPMG

Rafal Ciołek
Tax Advisor, Partner in the International Corporate Tax Team at KPMG in Poland

- specialising in corporate income tax law, from tax consequences of domestic transactions to effects of the international transfer of capital, goods and services
- 18 years of experience in tax consulting, including tax issues related to the real estate market, international tax law and issues at the intersection of tax law and commercial law as well as tax law and copyright law
- he participated in the development of a series of international tax structures for capital groups and managed the tax aspects of mergers, acquisitions, and other ownership and organisational transformations
- he advised clients in the implementation of numerous tax efficient divestiture scenarios in Poland
- he participated in a number of parliamentary committees and teams, chairs the CIT/PIT Group and is a member of the Tax Council of Konfederacja Lewiatan (Polish business organisation), which he often represents taking an active role in the legislative process, member of the International Fiscal Association in Poland
- author of numerous publications in the field of tax law, including the report on cross-border corporate restructuring, published in Cahiers de droit international fiscal in 2011
- qualified tax adviser (member of the National Chamber of Tax Advisers since 2000), graduated in Management and Marketing from Warsaw School of Economics (Master of Economics and completed doctoral studies at the College of Management and Finance)
- he has considerable industry experience in real estate, telecommunications, FMCG, automotive industry, as well as issues at the intersection of tax law and commercial law and copyright law
- with KPMG since 2004
New transfer pricing documentation – the new reality

Amendment of the related party transaction documentation regulation introduces entirely new rules of its preparation. However, before discussing the changes in the documentation itself, we should note that the definition of the related party itself is now heavily altered: from 2017 onwards entities linked by capital will be deemed to be related only if and when such links between them, whether direct or indirect, exceed the threshold of a 25% equity shareholding.

Documented transaction thresholds

As an after-effect of the OECD initiated BEPS Action Plan aimed at countering the phenomena of tax base erosion and profit shifting, the taxpayers will be required to prepare documentation in a manner different than previously. From the year 2017 onwards, the obligation to prepare it will rest only with those whose revenue or costs in the previous fiscal year exceeded EUR 2 million. Only the transactions of significance for the taxpayer will need to be documented. The basis here will be their value in relation to the scale of a given taxpayer’s business operations:

• starting from the transactions exceeding EUR 50,000 in the case of smaller taxpayers
• to the transactions exceeding EUR 500,000 in the case of the largest entities (with revenue or costs exceeding EUR 100 million euro).

Comparable analysis

In addition to the primary documentation, the taxpayers with revenue or costs exceeding the threshold of EUR 10 million will also be required to submit comparable analysis. Its role will be to present through comparative data analysis that the price in a related party transaction was an arm’s length price. Thus, the character of the documentation presented to the fiscal control authorities will have changed. Until now, the documentation included the information and data the tax authorities used to analyse whether a transaction had been executed on terms acceptable to independent entities. Pursuant to the new regulation, the taxpayer will need to be able to demonstrate that fact in their documentation.
Capital group disclosure

Entities with revenue or costs exceeding EUR 20 million will be required to prepare additional documentation on the entire group they form part of. This constitutes another additional reporting obligation. The information about the group will need to include relatively specific data, e.g., detailed description of the group operations, including information on the mode of financing of individual companies which form part thereof.

Special reporting requirements added

The largest taxpayers, i.e., the parent undertakings within groups whose consolidated domestic and international revenues exceed the equivalent of EUR 750 million will need to submit special reports on the income, the tax paid and the places of business of their subsidiaries and foreign permanent establishments (referred to as “country-by-country reporting”). At the same time, all the taxpayers required to prepare the documentation will need to meet the obligation of submitting on the date of filing their annual tax returns a representation stating that the documentation of its related party transactions had been prepared. This will have created an entirely new reality for the corporate functions currently bearing the responsibility for preparing the documentation; one that calls for advance preparation.

You may also read a publication prepared by the transfer pricing team of KPMG in Poland: “Ceny transferowe: Rewolucja w dokumentacji podatkowej” [Transfer pricing: Revolution in tax documentation], downloadable from the kpmg.com/pl/CenyTransferowe website.

You can monitor the latest news on the progress in the drafting of the OECD BEPS Action Plan reports and the discussion of the changes which the related recommendations of the OECD may imply for the Polish taxpayers on the kpmg.com/pl/BEPS website.

Jacek Bajger
Tax Advisor, Partner and Head of Transfer Pricing Team at KPMG in Poland

- specialising in tax advisory, and particularly in transfer pricing, in an area in which he has amassed over 20 years of professional experience
- licensed tax advisor (member of KIDP, the Warsaw based national chamber of tax advisors, since 1998) and graduate of the Jagiellonian University Faculty of Law
- he has headed the Transfer Pricing Team at KPMG in Poland since 2001 and coordinated KPMG’s transfer pricing advisory services within the CEE region
- he bears responsibility for comprehensive tax and legal advisory on the related party transaction issues, including, among others, for preparation of analytical economic and comparative reports, and of tax documentation
- he represents clients in tax proceedings and negotiation of advance pricing agreements with the Minister of Finance
- he coordinates the broad ranging day-to-day tax advisory services delivered to many Polish and international business entities of various sectors
- speaker at many transfer pricing focused domestic and international conferences, seminars and training courses
- author of a number of pieces on transfer pricing published in Polish dailies of national circulation and specialist periodicals, both Polish and international (inter alia, Przegląd Podatkowy, International Tax Review, Euromoney Corporate Tax Handbook)
- his sectoral experience covers such industries as: banking and financial services, the automotive sector, real estate, pharmaceuticals, food processing and electronics
- with KPMG since 2001
Grants and tax incentives for financing enterprise operations available until 2020

In 2015 the authorities issued early calls for applications from seekers of grant funding for enterprise projects under the new EU Financial Framework for 2014-2020. Additionally, a new tax premium for R&D projects comes into force as of 1 January 2016. Thus entrepreneurs gain a number of opportunities to get tax incentives and grants supporting projects in such areas as research, development and innovation, investments and environmental activities.

Research and development is more than laboratory work

For many, the phrase ‘research and development’ inadvertently brings to mind projects executed in laboratories or those involving ground-breaking technologies. In real life, many activities which enterprises consider their day-to-day business, such as identification and testing of new manufacturing materials, upgrade work on a production line and product improvement works actually fall into the research and development work category.

Depending on the type of executed work, the degree of innovativeness of its outcome or the scale of the incurred costs, enterprises can obtain grants or take advantage of the new tax premium.

In majority of the projects the enterprises execute, grants range from 25% to 50% of eligible project costs (e.g. higher financing rates will be available to SME sector enterprises). When taking advantage of the new R&D related tax incentive (R&D tax credit), enterprises can additionally deduct up to 30% of project costs from the tax base and thus reduce their income tax payable.

It is worth noting that the new R&D tax credit is an instrument aiming to support R&D activity in enterprises, a measure present in tax legislation of the many countries which foster economic development through innovation, e.g. the United Kingdom, Ireland or Australia.

Equipment and infrastructure for R&D work

Entrepreneurs who intend to procure equipment for R&D work, adapt a facility for that purpose or even have a new building built may secure grants available under the “Support for investments in R&D infrastructure of enterprises” measure of the Smart Growth Operational Programme. The grant amount in this case can range between 10% and 70% of eligible project costs and will depend on project location and company size.

Capital expenditures

Under the present Financial Framework grants for the typical investments in manufacturing assets will be available only to small- and medium-sized enterprises. Majority of the programmes, including the regional ones, call for fulfilment of the criterion of inclusion in the proposed project of a research and development component.

One example of a capital expenditure grant is provided under sub-measure 3.2.1 Support for implementation of results of R&D works – “Research to the market”. The co-financing
available under that sub-measure is designated for investment projects involving implementation of R&D work results and is aimed at market launch of new or significantly improved products or services. The maximum support for projects of that type will be PLN 20 million.

In turn, large enterprises can obtain income tax exemption for the capital expenditures undertaken within the Special Economic Zones as well as real-estate tax exemptions. Availability of financing under government programmes is also likely.

Environmental activities

The environmental projects that qualify for financial support include, among others:

- reconstruction of production lines to increase their energy efficiency
- deep and comprehensive energy-efficient retrofitting of company buildings and
- implementation of energy recovery technologies, including company based waste heat utilisation systems.

There are also grants available for the support of R&D project aimed at the development of environment-friendly technologies.

How to acquire tax benefits and grants?

The process of securing tax incentives and grants is best commenced with the analysis of company operations and planned projects, specifically from the standpoint of the available funding sources. Such an approach ensures optimal selection of financing. The next step involves application for co-financing, which needs to be done with the awareness that every programme follows its unique project selection rules. It is worth underscoring that in the case of EU grants funding is awarded on competitive basis and the project selection criteria which the relevant institutions follow in application assessment call for special attention. No less important than acquisition of the co-financing itself is the legal compliance with the specific project execution requirements, as serious shortcomings in that area can force the supporting institutions to demand return of the awarded financing.

You may also read a practical guidebook to the support programmes available to enterprises prepared by KPMG in Poland: „Fundusze unijne na lata 2014-2020 - przewodnik dla przedsiębiorców” [UE funds for the years 2014-2020 – guide for the enterprise sector], downloadable from the kpmg.com/pl/UlgiiDotacje website.

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Tax Advisor, Tax Advisory Director, Head of Grants and Incentives at KPMG in Poland

- specialising in advisory services in tax incentives, grants and tax advisory for local and international businesses, including those engaging in research, development and innovation (R&D&I)
- with longstanding professional experience covering, among others, development of R&D&I work financing strategies, acquisition of tax incentives and grants, tax advisory for R&D&I projects and their commercialisation
- within the Special Economic Zones and State Aid advisory, he provides, among other, support in: securing grants out of the EU Structural Funds, domestic sources, EU initiatives and other sources for support of investment; R&D and environmental protection work; development and implementation of support strategies for R&D centres; placement of investors in the Special Economic Zones (SEZ), negotiation of SEZ expansion, and ongoing advisory for enterprises operating within SEZ
- Member of the international R&D Incentives and Global Location & Expansion Services (GLES) KPMG network
- licensed tax advisor, graduate of the Warsaw University Faculty of Law and Administration
- his sectoral experience covers such industries as: automotive, ICT, chemical, fuel and energy, and natural resources
- with KPMG since 1998

Medium-sized and large enterprises of Central and Eastern Europe, including those operating in Poland, anticipate growth in revenue and employment in the year 2016. Even though only 24% of Polish enterprises expect improvement in their economic standing, 40% anticipate employment growth and 45% anticipate their staff will have higher salaries.

In September 2015 KPMG conducted a survey among 731 medium-sized and large enterprises in nine countries of Central and Eastern Europe: Poland, Czech Republic, Slovakia, Hungary, Romania, Bosnia and Herzegovina and the Baltic countries. Its purpose was to understand the individual standing of companies, general issues such as investment attractiveness of Poland and the other countries of Central and Eastern Europe as well as to learn about respondents’ plans for 2016.

**Forecast 1: Companies’ improved economic standing**

The KPMG survey indicates that as many as 66% enterprises in the Czech Republic, 63% in Romania and 61% in Hungary expect their economic condition to improve in the year 2016. The average for the entire region of Central and Eastern Europe stands at 51%. The positive outlook percentage was the lowest among the Polish respondents, with 24% of the enterprises anticipating improvement in their economic standing and another 54% expecting it to remain stable. Similar results were found in Estonia: 29% positive and 51% neutral responses. The surveys in both those countries registered the second highest percentage of enterprises offering negative forecasts of their economic condition in the year 2016 (21% in Estonia and 23% in Poland). The highest number of negative responses came from Bosnia and Herzegovina (32%). The Polish enterprises have operated under conditions of continued economic growth for over 10 years. It is no surprise then that they are not as optimistic as the firms in the other countries of the region, which had first-hand encounters with the crisis.
Forecast 2: Employment growth

The enterprises planning greatest employment growth in the year 2016 are those of Romania (42%), Poland (40%) and Hungary (39%). The enterprises planning the least new hires are those of Lithuania and Latvia (21% in each). This is also where the highest percentage of the interviewed enterprises plan employment decreases (18% of the enterprises in Lithuania and 19% in Latvia). Clear majority of the enterprises plan to maintain their staff numbers at largely unchanged levels. This percentage stands in Poland at 49%. Polish companies went through radical employment restructuring in the years 2009-2010 amid concerns for the onset of the economic crisis in this country. That is why the enterprises with a more optimistic outlook realise that their further growth may require for employment growth. This is good news for young people, who in the recent years found the job market difficult.

Forecast 3: Salary increases

Three out of four enterprises in the Czech Republic and Estonia plan pay rises in the year 2016. Lithuania also ranked very high in this survey (69%). With a result of 45% Poland was among the countries with the lowest percentage of companies expecting staff salary increases: immediately behind Latvia (39%), Hungary (39%) and Bosnia and Herzegovina (42%). The percentage of the surveyed enterprises planning to decrease salaries in the year 2016 was marginal. With the experience of stability of the economic environment over the recent years, Polish enterprises are inclined to continue their current wage policy.

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- specializes in business management advisory, focusing mainly on the implementation of information technology
- heads KPMG’s economic advisory service in Poland and in the Central and Eastern Europe region
- has over 20 years of experience in the design and implementation of IT systems and strategies for enterprises and capital groups from different sectors of the economy, mainly for the telecommunications and financial sectors
- he was responsible for the implementation of a number of ERP systems, including SAP systems, both in large multinational corporations as well as in Polish listed companies
- his experience includes the use of IT systems to increase the efficiency of business processes and organisational structures
- has extensive experience in managing software development projects and implementing integrated IT systems
- with KPMG since 2001
A new era in tax controls
- IT aspects of the Standard Audit File for Tax in Poland

In the second half of 2016, Poland will introduce the Standard Audit File for Tax based on the OECD SAF-T standard. This will be a revolutionary tax audit tool. At the request of tax audit bodies, taxpayers will need to pass analytical data electronically from specific areas of a company, prepared in a uniform format and for the required period. This will be analytical data, i.e. at the level of individual transactions, for example individual invoices.

Data areas
The analytical data that taxpayers will be required to provide will cover areas such as general ledger, business partners and settlements with them, while detailed invoices for sales as well as warehouse operations will have to be internally consistent, complete and in accordance with reported taxes (CIT, VAT). In terms of IT, this requires the preparation of several files in XML format in a form and scope that will be determined by the Polish Ministry of Finance. A draft version of the specification was recently published and comments to it can be submitted up to 26 January 2016. The final version is scheduled for March 2016. For large entities, the requirement of issuing a Standard Audit Files for Tax (SAF-T) at the request of the audit body shall enter into force from July 2016.

Data for an SAF-T in one integrated IT system
If all the data is held in one integrated IT system, then there should be no problems. Before SAF-Ts enter into force, it will be necessary to obtain an update from the accounting system software producer – usually it will be a report or a program that generates files containing the required data. Depending on the terms of the agreement between the company and the supplier, this may entail an additional fee. In the event that the functioning of the system is changed significantly, it may turn out that the standard report will not operate properly. It will then be necessary, probably for a fee, to tailor it to a particular company. The leading
international providers of ERP systems already have these types of reports for countries in which SAF-Ts have been implemented (e.g. Portugal), which may prove helpful for the implementation of the Polish version.

Data for SAF-Ts in many systems

In the case where the data for an SAF-T is contained in many systems, the situation in terms of information technology is more complicated. First of all, it will need to be assembled into a common data set for a particular taxpayer. However, if, for example, customer data and settlements with them are in two or more systems and there is no harmonised identification of contractors, the tax audit body may have difficulty with the correct identification of a transaction and consequently it may make allegations regarding it. In that situation, work to identify data sources should begin immediately. This may require special IT tools of a high degree of complexity to be created. The requirement to store historical data, e.g. in the context of tax adjustments, will also influence this.

Challenges for taxpayers

Apart from the earlier identification of data sources for a tax audit, the need for taxpayers to modify their accounting systems, and in some cases also the rules for maintaining tax ledgers, it may also be a challenge to prepare an SAF-T for companies in which the original set of accounts with analytical transactions is used for corporate reporting to headquarters; e.g. in the United States in accordance with US GAAP and Polish ledgers that contain only the relevant units and corrections.

Here, standard reports of software vendors do not provide adequate data for SAF-Ts. In this regard, in order for a company to meet this challenge it should begin IT work as soon as possible in order to create tools to generate the correct SAF-T files.

Another case that requires early analysis and the introduction of certain measures are IT systems that do not fully support the correct closing of accounting periods that may occur e.g. in relation to subsidiary ledger systems that support production and logistics. In Poland, these issues are usually resolved by applying a procedure; however, SAF-T reporting enforces its strict observance.

Note: At the date of publication of this article (19 January 2016), the final Polish version of the SAF-T has not been published, so both the detailed scope of data and the interpretation of the preliminary version published by the Ministry of Finance in specific cases (e.g. the data required for retail sales receipts, as well as for insurers and banks) are not yet known.

Andrzej Tajchert
Partner in the Advisory Department in the IT Advisory Team at KPMG in Poland

- over 20 years of professional experience including in the implementation of information systems in finance, human resources and payroll, logistics and production, both for software manufacturers and customers, as well as in the management of IT departments and large implementation teams both in Poland and abroad
- he carries out projects involving organisational transformation management and the process resulting from changing IT tools and the advent of new digital technologies
- he conducts audits of problematic projects and implements remedial programs
- he has participated as an expert in numerous tenders conducted under the Public Procurement Law
- with KPMG since 2004
Business partnership - the role of the modern CFO

The main challenge faced by Chief Financial Officers in organisations which continue to pursue the traditional way of doing business in the dynamic business environment, is to enter the path of transformations and build a modern finance team of the future. This means going beyond the current, traditional understanding of finance function, such as reporting or controlling, and shift towards active business support – by reliably, quickly and competently describing the business reality in management reports to raise the awareness of strategic business decisions.

Findings of KPMG International survey “The view from the top”

30% of the global CEOs say their CFOs do not understand or assist them enough with the challenges they face with running their organizations. They also see that too many CFOs see their role as sponsoring the change rather than leading the change. The change leader should actively take the organisation through changes by skilfully managing business expectations and fostering a culture of continuous improvements within the organisation. 61% of surveyed CEOs believe that all factors and pressures, both internal and external to the organisation, which are beyond its control (for instance, changes in regulations and legislation) may be seen as an opportunity to derive competitive advantage. 85% of CEOs of top performing organizations say, that applying financial data to achieve profitable growth is the greatest strategic value their CFO can bring to an organization. The biggest number – as many as 97% of surveyed CEOs are convinced that talent management is the most or equally important factor in improving the finance function by a modern CFO – to successfully manage a transformation.
KPMG Operating Model

From bookkeeper to business partner

- **Value driver**
  - Entirely internally focused
  - 52%
  - Financial functions spend up to 25% of their time on supporting business decisions in the organization

- **Integrated finance function**
  - Finance function in silos
  - 70%
  - CFOs indicate that building awareness about finance and risk alignment is important in their finance functions

- **Business partner**
  - Scorekeeper
  - 8%
  - CFOs feel that talent management is the most important factor determining the effectiveness of the finance function in the organization

- **Standardized and optimized**
  - Business unit (BU) specific
  - 50%
  - CFOs, who manage organizations with net profit growth of more than 10% over the past three financial years, are implementing lean finance or consider it as important

- **Central data model/systems**
  - Incompatible systems and data models
  - 70%
  - Organizations, which manage to increase their net profit in the last 3 financial years consider a development of financial and accounting systems as important

- **Strategic sourcing /SSCs optimized**
  - Decentralized processing
  - 70%
  - Organizations, where Shared Services Centres (SSC) were effectively implemented gained more than 10% of net profit

- **Modern financial teams**
  - Traditional financial teams
  - 70%

Source: A report by KPMG in Poland "Business partnership: Inside the intelligent finance function", 2015
Who is the modern CFO?

The latest KPMG’s in Poland survey conducted among 120 CFOs in Poland (full results published in the report “Business partnership: Inside the intelligent finance function”) reveals that building modern operating models using lean finance principles and shared service centres, implementing innovative techniques and analytical tools for reliable forecasting, taking a more strategic approach to talent management within the organisation and aligning finance and risk functions are top priorities for modern CFOs building a team of business partners.

Modern CFO who meet the needs of the modern business, have already launched intensive efforts to reinforce the perception of their team and themselves across the organisation – they boost their efficiency and increase contribution or actively create the value for the organisation. They do it by shifting the focus from traditional functions of finance toward the role of a modern leader of change, value creator or a strategist, who supports or even influences new strategic directions of the organisation.

Together with their teams, the value creators, the leaders of change and the strategists, enter the path of success using the lean philosophy, centralization of basic transactional and financial processes at shared service centres, implementing innovative techniques and intelligent analytical tools, aligning finance and risk management policy and by pursuing strategic talent management in their teams. Teams that they lead as business partners and mentors, who have acquired talents, built unique sets of staff competencies and are relentlessly developing them by building a whole new generation of finance leaders, heading towards building business partnership. Business partnership, one of six key areas of success of the Target Operating Model (TOM) designed by KPMG, stands for an ultimately conscious commitment, strategic initiatives within the organisation, and a strong need to build, maintain and continuously develop business relations that reinforce transfer of knowledge across the organisation. Only this way a modern CFO and his or her team may contribute to reinforcement of the value creation process that add value to the organisation.

A modern CFO in its future role will:

- boost speed, flexibility and quality of financial information
- enable finance teams to deliver services of greater range and value
- create “on the way to excellence” mindset with continuous process improvement approach
- develop strong relationship and dialog between finance function and business
- build platforms and tools for intelligent data analysis and decision support
- build the future skills, capabilities and competence framework of intelligent finance function

Violetta Malek
Director of the Advisory Services Department at KPMG in Poland

- specialising in the optimisation of processes, transformation of financial departments and the creation, implementation and management of shared services centres
- experienced in projects to optimise business (implementing the value management philosophy), financial (lean finance), manufacturing (lean manufacturing), sales and operational processes
- Violetta participates in the creation, implementation and management of shared services centres
- she has over 20 years of experience in managing the finances and the performance of companies, advising on creating and implementing cost optimisation programmes and value creation programmes, carrying out restructuring and transformation processes, including complex implementations of IT solutions, as well as the implementation of centres of excellence (including EMEA SSC, CEE), outsourcing of payroll services and change management
- prior to joining KPMG she worked in management positions (finance director, CEO, board member)
- her sector experience includes: manufacturing, cosmetics, logistics, transport, business services, technology and telecommunications
- Violetta is a graduate of: WUT Business School (a program shared with the London Business School, HEC in Paris and the Norwegian School of Economics in Bergen, EMBA), College of Management and Marketing in Warsaw (Financial Management, MA), University of Lodz, Faculty of Economics (Organisation and Management, Bachelor) and Warwick Business School (Business Administration Program)
- with KPMG since 2015
Closing of financial year 2015 and the impairment of assets in the current economic circumstances

Financial Year 2015 abounded in numerous events that have affected the Polish economy and the business environment, including: the release of the Swiss Franc exchange rate in January (which has increased to PLN 4 per CHF 1), the overlapping of economic turmoil and political unrest, international security issues in close and distant proximity to Poland, announcements of the introduction of new taxes as well as the ongoing restructuring of the mining industry. Consequently, the stock exchange, which for many years has been considered a barometer of economic conditions, brought disappointment to shareholders.

The downward trend of WIG indices

In 2015, the WIG index maintained its downward trend, losing around 10% of its value compared to the end of 2014. Simultaneously, the WIG20, the index of the largest companies, lost around 20% of its value. In December 2015, both indices hit their lowest levels since the financial crisis in 2009. In comparison, during 2015 the Frankfurt DAX index gained 10%, while the NYSE S&P500 index maintained a similar level in December as it had at the beginning of 2015.

At the end of 2015, the majority of companies listed on the Warsaw Stock Exchange reported market capitalisation below the book value of net assets – the average P/BV multiple was barely equal to 0.94. A P/BV ratio below 1 indicates a potential impairment of assets in a company. In this respect, last
year was especially disadvantageous for the mining sector (P/BV 0.49), the energy sector (P/BV 0.65), the property development sector (P/BV 0.83) and the financial services sector (P/BV 0.87).

**Impairment testing of selected assets**

For Chief Financial Officers, the period of closing financial statements is the most intense time of the year. Among numerous obligations related to annual reporting, there are certain requirements imposed on companies by International Accounting Standard 36 “Impairment of Assets” (abbrev. IAS 36), which requires that selected assets are tested for impairment, including: goodwill, intangible assets and property, plant and equipment. Although some entities consider the impairment of assets on a daily basis, the majority of companies conduct appropriate impairment tests at the end of the financial year, which means that these tests are carried out in January and February of the following year.

**Results of the study conducted by KPMG for the “18th birthday” of IAS 36**

In 2016, IAS 36 will celebrate its “18th birthday”. It can be said that it has reached “maturity”; however, so far no one has attempted to verify whether IAS 36 has permanently established itself among Polish companies, especially those listed on the stock exchange.

With regard to recent events in the business environment that occurred during 2015, a team of experts from KPMG in Poland analysed how often listed companies applied IAS 36 and what amounts of impairments have been reported by them in financial statements within the last few years. To reach a conclusion, KPMG studied the financial statements of selected listed companies (from the WIG20 and a few industry sectors) published in 2011-2014 and for the three quarters of 2015. The research indicates that during each year over the last five years, the vast majority (between 65% and 90%) of companies in the WIG20 reported an impairment of assets in accordance with IAS 36. Write-offs were also not uncommon among smaller companies, mainly in the energy, financial services and chemical sectors.

In this respect, 2015 is expected to reach a record level. Based on already published financial statements for the three quarters of the year, write-offs were observed in 65% of WIG20 companies, while the average impairment amount was estimated at almost PLN 800m. Exceptionally high impairments have occurred in companies from the energy sector (including one single amount of almost PLN 9bn). Worthy of note was not only the number of reported write-offs, but also their amount in relation to companies’ market capitalisation. There are many reasons to believe that once annual financial statements are released, the total amount of impairments will be even higher.

Since similar issues would probably also apply to private companies, CFOs overseeing the process of closing the financial year should pay special attention to IAS 36, as it is considered one of the most complex accounting standards to be applied in practice. As indicated by KPMG’s years of experience, pure accounting knowledge is insufficient to correctly perform an impairment test. Such knowledge should be accompanied by experience in business valuations and M&A transactions.
Summary
With regard to the process of closing annual financial statements and due to the current economic situation, management boards are now facing many challenges associated with impairment testing. Many potential impairment triggers exist, including: decline in share prices, fluctuations of exchange rates, legal and regulatory changes and the implementation of new taxes. The key to success for CFOs will be effective cooperation not only with auditors, but also with financial advisors, who, by utilising their own expertise, will be able to support financial executives throughout the impairment testing process.

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- specialising in advisory services relating to business valuations prepared for transactions, financial reporting and regulatory purposes (including mergers, demergers and squeeze-outs)
- he conducts pricing analyses of trademarks and issues opinions on the financial terms of transactions (Fairness Opinions)
- he performs analyses of feasibility studies of projects and also develops and verifies financial models
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- in recent years, Tomasz Wiśniewski has participated in the preparation of approximately three hundred independent valuations of companies from various sectors and for different purposes
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- he also participates in valuation-related projects in other countries, particularly in Central and Eastern Europe, and cooperates with an international team of KPMG specialists dealing with valuations and impairment tests for financial reporting purposes
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- in previous years, he was involved in many M&A and financing projects (especially in the energy sector and industrial manufacturing), where he was responsible for pricing analyses, financial modelling and project coordination
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Transformation of the procurement function continues at Polish organisations

In recent years, a significant portion of Polish organisations have undergone a transformation from the role of the “procurement process coordinator” to that of the “executor of cost efficiency initiatives.” There are also market leaders, mainly entities from the consumer goods, financial services, insurance and industrial production sectors, which gradually transform procurement into a strategic function actively engaged in development of products and services (Value of Procurement stage). The goal of transformation is to redefine the role of procurement and move this function beyond the administrative execution of orders towards business partnership that supports the strategic development of the organisation. In many Polish organisations, procurement is a support function in charge of procurement process administration, but more and more companies are now focusing on the strategic value offered by managing the procurement function in the organisation.

From August until September 2015, KPMG in Poland conducted a survey among more than 100 procurement organisations from all sectors of the economy, of which 46% declared procurement spend for the past year in excess of PLN 500 million. The objective of the study was to get an insight into the maturity level of procurement organisations in Poland and identify their main challenges and development directions. Assessment and benchmarking of the maturity level of procurement organisations were facilitated by deployment of elements of KPMG’s Procurement Maturity Assessment (PMA) methodology, whose full framework features 11 operational areas and more than 500 detailed questions that verify the progress of a unit and possible gaps to be bridged, including expected financial outcomes of implemented changes. Findings underpin the report “Key Procurement Challenges – challenges and development directions of procurement organisations in Poland”, which presents a review of trends related to operations of procurement teams in Polish organisations and marks an attempt at identifying their development directions.

What is the role of procurement in the organisation?

The traditional role of the procurement function entails compliance with formal requirements for procurement processes and coordination of the supplier selection process. More and more often the procurement function embraces such strategic elements as spend, risk or supplier management. On the one hand, objectives of undertaken strategic initiatives include optimisation of total cost of ownership (TCO) across individual procurement categories as well as boosting the efficiency of processes and the quality of end products or services. In many cases, organisations fail to tie work performed by the procurement functions with objectives and business strategy of the entire organisation, which results in perception of the procurement function as a stumbling block or an unnecessary source of formal limitations instead of a partner for substantial discussions.

Findings of a global KPMG survey (“Harnessing the Power of Procurement”) reveal that only 27% of company managers perceive procurement as a source of value added for the organisation, and barely 40% stakeholders embrace the procurement function in execution of their business...
objectives. Polish statistics are very much the same. Despite the ongoing transformation of the procurement function, procurement employees at many organisations coordinate the procurement process, supervise adequate application of regulations and help finalise deals. Strategic initiatives, systemic support or management by objectives aligned to the business strategy are still a challenge for many organisations.

How mature are Polish procurement organisations and what challenges are they facing?

Findings of the Polish survey reveal that the dominant role of Polish procurement organisations is that of the “process coordinator”, which is yet gradually shifting towards the role of the “executor of cost-efficiency initiatives” (the score at 4-5 on the scale of 1-10). Leaders of the analysed sample of Polish enterprises scored at 7-8, which underlines implementation of innovative elements and building the role of procurement as a business partner for discussions related to products and pursued business strategy of the organisation. The assessment of the maturity level of procurement functions in enterprises operating in Poland points out that most of them (approx. 75%) are still at a rather early or a moderately advanced maturity level.

The analysis of individual areas of procurement maturity reveals that major challenges to leading market practises are posed by insufficient procurement support with dedicated IT tools. As many as 62% surveyed organisations have indicated that they do apply tools supporting electronic orders, whereas 58% use them to implement electronic auctions, and 47% aggregate needs to support planning functions. The challenge lies in the fact that the above support underpins the basic functionalities of procurement tools. More complete coverage of the procurement process, pursued by approx. 40% of interviewees, stands for embracing the supplier selection process (RFx), its assessment and the communication process within tool support – such initiatives are scheduled by an increasing number of units.

Another challenge is related to building the adequate perception of the role of procurement and ways in which the procurement function may contribute to building the value added for the organisation. This aspect ties directly to techniques measuring the efficiency of the procurement function.

Chart 1: Procurement maturity assessment of Polish organisations in line with KPMG’s PMA methodology

Source: A report by KPMG in Poland “Key Procurement Challenges – challenges and development directions of Polish procurement organisations”, 2015.
Orientation: strategic management

In recent years, organisations put the focus on analyses of the spend structure, spend categorisation and implementing cost-efficiency initiatives. Procurement has been centralised in many entities, which means that the recently dispersed split of responsibilities for consecutive stages of the procurement process has become structured and positioned within a dedicated organisational unit. The standard for management of the procurement function was persistently implemented to avoid overlapping activities and manage spend in an aggregate way to eventually optimise them. This referred to individual companies or public administration entities as well as capital groups which pursued the shared procurement policy in order to implement major process and cost synergies in the procurement area.

While defining the development strategy for the years to come, procurement directors have become keener to tap into strategic priorities related to developing team competencies, building close-knit cross-functional cooperation and defining strategic goals aligned to the business strategy of the organisation. The drive for reinforcement of the position and perception of the procurement function also translates into such operating elements as extending procurement procedures by building supplier or category management strategy, risk monitoring and measuring.

Chart 2: The scope of most frequent improvement initiatives

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Operational efficiency</th>
<th>Strategic management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process improvement</td>
<td>74%</td>
<td>54%</td>
</tr>
<tr>
<td>Cost reduction</td>
<td>72%</td>
<td>52%</td>
</tr>
<tr>
<td>IT tools</td>
<td>68%</td>
<td>51%</td>
</tr>
<tr>
<td>Vendor Management</td>
<td></td>
<td>33%</td>
</tr>
<tr>
<td>Category strategy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk management</td>
<td></td>
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</tbody>
</table>

Source: A report of KPMG in Poland „Key Procurement Challenges – challenges and development directions of procurement organisations in Poland” 2015
the efficiency of the procurement function. There is also a growing need for shifting the burden of operations to systemic solutions. Instead of employees dedicated to operational clearance of orders or invoices, the procurement vision 2020 entails building competence centres, the ultimate focus on strategic management and gradual outsourcing plus automation of operating elements.

It is important to perceive the procurement function not from the price perspective, but from the standpoint of process efficiency and total cost which takes into account product life cycle, its maintenance costs as well as social costs, environmental issues and qualitative aspects. While measuring the value generated by strategic procurement, we should not limit ourselves exclusively to monitoring the delivered cost reduction. It is essential to embrace execution of qualitative targets, outcomes of active demand management, efforts on order specification and reported needs, and above all, strategic cooperation and partnership-driven execution of business objectives in the organisation.

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• she designs and implements improvements to structures of procurement organisations, process efficiency and procurement tools as well as procurement category strategies
• experienced in executing complex procurement transformations, centralisation of the procurement function as well as implementing sustainable cost efficiency solutions and process improvements driven by the procurement strategy
• her sectoral experience includes the financial sector, public administration, energy, transport and manufacturing
• with KPMG since 2015
Liabilities arising from shareholder loans and legal actions with an equivalent effect versus a company insolvency after 1 January 2016

1 January 2016 saw the amendment of Art. 11 of the Bankruptcy Law, which defines the insolvency-related event in reference to a corporate person. Clear definition of the moment when a corporate person becomes insolvent is critical as the occurrence of such circumstances for 24 months implicates the obligation to undertake specific measures, and, in particular, to file a bankruptcy petition. The failure to file such a petition may result in the personal liability of board members for liabilities of a company in line with provisions of the Commercial Companies Code or the Tax Ordinance.

Ground for insolvency

One of prerequisites of insolvency is the status defined by the legislator as an event in which pecuniary obligations of a corporate person exceed the value of its property for a period of 24 months. Property should be interpreted as assets, except for assets excluded from the insolvent estate, for instance assets which form the company employee benefits fund. Such an event is sometimes referred to as a balance-sheet insolvency. Introduction of Art. 11 is justified by the legislator’s intention to exclude from legal transactions entities whose assets are insufficient to repay all liabilities, in the event of a need for their realisation.

Liabilities towards the shareholder versus insolvency

From 1 January 2016, loans granted by a shareholder to the benefit of a company as well as liabilities of a company towards a shareholder in relation to formal acts with consequences similar to that of a loan, undertaken over a five-year period prior to the date on which the bankruptcy was declared, will not be charged into the value of the company pecuniary obligations, which are determined to establish its solvency. Therefore, when administering the ‘solvency test,’ the board of the company may exclude such liabilities from the value of pecuniary obligations.

It should be also noted that from a practical point of view, the wording of this provision does not offer a clear answer whether introduction of a five-year period
from the date of undertaken legal acts refers exclusively to acts with consequences similar to that of loans or to loans as such. Moreover, it needs to be stressed that board members, creditors and the court will come across a major obstacle in performance of the insolvency test. Being a future date, the date of declaration of the bankruptcy will remain unknown, while it will be essential to identify the day which takes place 5 years prior to such date in order to evaluate which liabilities of a shareholder should be included in liabilities used for the purpose of the insolvency test.

The priority of claims

Another substantial change in terms of liabilities of the company towards its shareholders in relation to loans and actions with an equivalent effect made over a period of five years prior to the bankruptcy declaration date is introduction of a rule which provides that in the event of bankruptcy, such liabilities of the company are satisfied only after claims of all other creditors of the company have been satisfied. The same will apply to identical liabilities towards an entity which holds the majority of votes at a meeting of shareholders, a general meeting of shareholders or a shareholder of an insolvent company. The above principle does not apply to liabilities of an insolvent company towards a shareholder holding less than ten percent of votes at the meeting, unless s/he is a member of the company bodies or actually manages its affairs.

In spite of introduction of amendments with respect to the Bankruptcy Law which refer to the priority of satisfying liabilities towards shareholders, within the meaning of the Accounting Act the above obligations are still qualified as obligations of the company which diminish its net assets and the corresponding equity within the meaning of Art. 3, section 1 point 29 of the Accounting Act. Art. 14 section 3 of the Commercial Companies Code, which stated that loans granted by a shareholder over a period of two years prior to the bankruptcy declaration are recognised as a contribution to the company (and thus as a contribution to equity), was repealed on 1 January 2016.

Summary

Effective on 1 January 2016, the described amendments in relation to exclusion of selected liabilities towards a shareholder (as well as selected parent entities) from the “insolvency test” category are heading in the expected direction. Nevertheless, it should be noted that they also stir substantial doubts concerning their interpretation and the scope of their application, which will need to be clarified in specific cases by practitioners who apply these regulations.

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- Legal Counsel since 2003 (Regional Chamber of Legal Counsels in Warsaw) and a stockbroker holding the professional stockbroker license since 1995, graduate of the Faculty of Law and Administration at the University of Warsaw
- he demonstrates vast experience and advises clients in immovable property law and construction law, bankruptcy law, enterprise restructuring and balance sheet law
- he evaluates balance sheets of business entities to identify the risk of liability for its management for obligations of the company and advises them how to minimise or rule out such liability
- he analyses balance sheets of companies and advises them how to legally pay amounts payable as dividends, redemption amounts, contributions to reserve capital and loans in relation between the company and its shareholders
- from 2013 until 2015 he contributed to reorganisation of operations of a Polish bank and a branch of a credit institution
- from 2013 until 2015 he advised in an restructuring procedure of a special purpose vehicle being the owner of a shopping mall
- specialising in bankruptcy and restructuring, from 2010 until 2013 he carried out restructuring transactions of a group of entrepreneurs combined with a forced disposal of assets and represented clients in bankruptcy proceedings
- he has worked for the law firm D.Dobkowski sp.k. affiliated with KPMG in Poland since 1999
More rights for financial market customers

11 October 2015 saw enforcement of the act of 5 August 2015 on handling of complaints by financial market operators and on the Financial Ombudsman (hereinafter called the “Act”), which imposed a number of obligations on financial market operators specified by the Act in relation to natural persons who have contractual relations with such operators and substantially reinforced the position of the customer in these relations. The Act also contains provisions which in practice give rise to questions concerning their interpretation.

Who is affected by the new act?

The material scope of the Act covers banks, credit unions, lending institutions, insurance companies, investment and pension funds and societies as well as financial institutions (the definition of the financial institution being rather exhaustive, among others including lease and factoring companies).

The Act governed the procedure for filing and handling complaints by the above-specified financial market operators. At the same time, it provided the definition of the complaint, which is understood as any approach addressed to such operator by its customer in which the customer raises objections in relation to services provided by the operator.

The literal meaning of the Act indicates that the customer of a financial market operator is a natural person, which means both an individual who does not conduct economic activity and a one-man undertaking, since the term “consumer” is not used in the Act. Supporting documentation to the draft bill reveals that it was the intention of the legislator to regulate handling complaints filed by consumers. The final wording of the Act leaves no doubts that its provisions refer to both categories of entities.

Admissible ways of filing a complaint

In line with provisions of the Act, a complaint may be submitted:

a) in writing – in person, to a unit of the financial market operator providing services to customers, or by post

b) orally – by telephone or in person, into a record, during the customer’s visit to the unit of the financial market operator

c) in electronic format using means of electronic communication, provided that such means have been designated for this purpose by the financial market operator.

In addition, the Act commits financial market operators to provide in contracts made with customers information about the procedure applicable to filing and handling complaints, i.e. the place and the format for submission of complaints, the deadline for their handling as well as the method by which information about the handled complaint will be communicated. In case of customers with whom no contract was concluded, such information should be provided within 7 days upon lodgement of the claim (e.g. in the case of claims concerning a rejected credit or financing application related to lease).

The above regulations may give rise to doubts in their interpretation and elicit questions whether a financial market operator should enable its customers to lodge a complaint in all formats specified by the Act (or whether ways for filing the complaints specified by the Act should be interpreted as prospects for filing a complaint permitted by law, considering that the way which is applicable to a given relationship between a financial market operator and the customer depends on provisions of the contract made with a given customer).
There are similar doubts concerning the place of filing the complaint, and, in particular, should a financial market operator enable its customers to file a complaint at all customer-serving units and thus include all units in the contract made with the customer, or only at those units which were specified in the contract with the customer. This issue is critical for operators with an extensive service network or benefitting from numerous branches or sales offices. The interpretation which provides that the contract with customer should itemise detailed addresses of all organisational units of a given financial market operator seems to be too far-reaching. The Act is a new regulation, which means that there are no related comments, principles, market practise or case law. Supporting documents to the draft bill also fail to address ways of filing complaints as they mainly focus on the complaint handling procedure.

**Complaint handling procedure – acute effects of the failure to provide a reply**

The Act provides that a complaint should be handled by a financial market operator without undue delay, but not later than within 30 days upon its receipt. On the other hand, in particularly complex cases where it is not possible to provide a reply within 30 days, the deadline for handling the complaint and provide the reply may be extended up to a maximum period of 60 days. Nevertheless, the customer must be notified about the extension of the deadlines, reasons behind the delay and circumstances which must be established to handle the case.

The adopted regulation features a significant novum – the failure of a financial market operator to meet deadlines for the above-specified reply is deemed as a complaint accepted in line with the customer’s intentions. This provision will certainly force financial market operators (not committed to do so before) to introduce relevant procedures in order to mitigate the risk of the failure to provide a timely reply, and thus the risk of suffering negative financial consequences and the reputation risk as well as to ensure adequate resources to guarantee the efficiency of this process.

Undoubtedly, this strict provision concerning consequences of the failure to meet the deadline for provision of the reply will have an impact on contractual relations between operators cooperating in the area of customer service (the need to clarify the obligations of parties and to define consequences of non-performance of these obligations).

Still, the Act is not sufficiently exhaustive in relation to the deadline for the reply – it does not provide for all circumstances which may occur in the course of performance of a contract with customer. Issues giving rise to doubts include, in particular, the method for establishing the deadline for the reply in the case of related products, for instance, when a complaint about the operations of an insurer is lodged at the seat of the bank in the case of bancassurance products. It also remains unclear whether the time-limit for handling the complaint runs from the day on which the customer has lodged the complaint at the bank, or from the day on which the insurer received communication about the lodged complaint from the bank.

The Act has also introduced the requirement of supplementing the reply to the complaint, both when the complaint is accepted and rejected, with mandatory items (i.e. when
the claim is rejected – factual and legal justification and appraisals about prospects for filing a motion to the Financial Ombudsman or bringing a case to a common court.

The Financial Ombudsman replaces the Insurance Ombudsman

The Act has introduced the option to have the dispute between the customer and a financial market operator resolved by means of extra-judicial conciliation procedure (beginning with 1 January 2016). The proceeding will be instigated on the request of the customer by the Financial Ombudsman, who on enforcement of the Act, i.e. on 11 October 2015, has replaced the institution of the Insurance Ombudsman.

After examining the case, the Ombudsman may:

- notify the customer that it established no infringement of its rights or interests
- summon the financial market operator upon establishing that its activities infringe customer rights or interest, to re-examine the case
- request a relevant body to examine the case, and, in particular, the Polish Financial Supervision Authority, the President of the Office for Competition and Consumer Protection, the prosecution service or public, professional or social inspection authorities
- in certain cases, it may also bring a legal action.

Imprecise inter-temporal provisions

Imprecise transitional provisions are a major drawback of new regulations. By and large, they mainly refer to the institution of the Insurance Ombudsman and fail to accurately define obligations of financial market operators towards customers with whom they made a contract prior to the effective date of the Act. Undoubtedly, the procedure for handling complaints provided under the Act will be applicable to contractual relations established before 11 October 2015. Yet, it remains unclear how current customers of financial market operators should be notified about the complaint procedure (and whether such obligation exists at all) as a significant portion of contracts made prior to the effective date of the Act do not contain any provisions related to the complaint process.

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- Legal Counsel since 2004 (Regional Chamber of Counsels in Warsaw)
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- she contributed to many projects related to acquisition of enterprises, mergers and transformations of companies, liquidation, restructuring and privatisation processes as well as complex due diligence, drafting and reviewing contracts, legal documentation, drafting legal opinions in all matters related to clients’ current business operations
- she demonstrates extensive experience in labour law, including legal forms applicable to employment, redundancies, transfer of an enterprise to a new employer, negotiations with the trade unions
- her sectoral experience covers the following industries: banking, finance, automotive, shared service centres, temp staffing agencies
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Hybrid debt securities

Corporate hybrids have become an economically significant, diversified and a dynamically growing segment of the debt securities market in the recent years. The term is capacious and various classification criteria are in use. In the broadest sense, it includes all securities which combine features of external and equity finance. Considering the fact that debt securities issues are often highly personalised, in practice one can distinguish multiple variations and mutations of those instruments. This stands in contrast to the limited number of their underlying legal forms.

Introduction
On the basis of the 1995 Bond Act, corporate hybrids in Poland included convertible bonds (entitles to acquisition of company shares of new issue in exchange for those bonds), senior bonds (entitles to subscribe to company shares with priority over the existing shareholders) and – according to some classifications – participation bonds (granting the bond holders the strictly corporate right to participation in the issuer’s profit). The Bond Act of 15 January 2015 has extended that catalogue to include two other types of instruments: the perpetual bond (also referred to as the console) and subordinated debt.

PERPETUAL BONDS

Background and origin
Securities with unspecified maturity have a relatively long tradition and have been used with success in the contemporary capital market. In the acclaimed The Birth of Plenty: How the Prosperity of the Modern World Was Created William J. Bernstein mentions a Dutch woman by the name of Elsken Jorisdochter, who in 1624 paid 1200 florins for perpetual bonds bearing interest at 6.25% a year, issued by the Lekdyk Bovendams company established 1323. The Lekdyk Bovendams took the term “perpetual” seriously. Over 300 years later (in 1957) the same notes continued to be traded over the New York Stock Exchange and yielded interest to the bond holders (descendants of Ms. Jorisdochter ultimately monetised the investment in the year 1938).

In Poland, issuance of perpetual debt pursuant to the previously effective Bond Act was practically impossible, due to the requirement of including maturity related provisions in the bond documentation. That solution affirmed a broader principle established in the Polish law, which states that undated continuous obligation is not perpetual and that each of the parties in an obligation relationship has the competence (formative right) to terminate it (art. 365¹ of the Civil Code). The currently effective Bond Act of 15 January 2015 allows for derogation from that rule.
**Perpetual bond in essence**

In the light of relevant legislation, a perpetual bond is a debt security, which is not redeemable and which entitles the bond holder to receive interest for an unspecified period of time. The English phrase “perpetuals, like Peter Pan, never mature” wittily captures the concept of issuing a security without the redemption obligation. In the Western market practice, several varieties a perpetual bond evolved out of that basic premise.

It is understood that the issuer can:

- undertake to redeem the debt without providing the maturity period in the issue terms
- provide themselves with a call option
- specify that the bond would never be redeemed and that interest is the sole benefit accruing from them.

The scope and types of perpetual bond applications in Poland will be a function of the international experience and the local circumstances. Of significance here will be, for instance, market participants’ familiarity with the practical strengths of that instrument.

**Instrument that is attractive to investors, issuers and corporate managers**

For the issuer, perpetual bonds can be a source of quasi-equity capital. Worth noting is the fact that both Polish and European prudential banking requirements nonetheless permit inclusion of these types of instruments in Tier I and Tier II capital. Thus, in the regulatory context, issue proceeds are treated in the same way as contributions of share subscribers.

At the same time, the sale of perpetual bonds does not imply the constraints and inconveniences typical to equity. The shareholders need not be concerned about the loss of corporate control, because such borrowing will not dilute existing shareholdings. In contrast to the effects of a capital increase, inflow of external capital will not lower the price to cash earnings ratio, a significant concern for shareholders of public companies.

Of importance for corporate managers, particularly of joint stock companies, is the fact that perpetual bond issues (in contrast to those of senior bonds or such typical hybrids as convertible bonds) do not call for a General Meeting resolution. Thus, the management board of a company can raise capital without the need for a consent of shareholders or of a supervisory board. However, such a management board prerogative can be limited in the company agreement or articles of association (in the case of perpetual bonds this is likely to become a rule).

**SUBORDINATED DEBT**

**Past experience**

In contrast to the perpetual instruments, subordinated debt instruments have been known in the Polish market well before the adoption of the Bond Act of 15 January 2015. They became widespread in the banking sector, because of the possibility of including them, at the consent of the Polish Financial Supervision Authority, to a credit institution’s Tier II capital. In spite of a lack of dedicated regulation (but also because of the lack of
Subordination under conditions of corporate restructuring

Though pursuant to the Bond Act, subordinated debt is defined primarily in terms of creditor relations after announcement of the issuer’s bankruptcy or liquidation, it is worth noting that certain regulations of the Act equate the status of subordinated creditors with that of shareholders even before a company is wound up.

As an example, pursuant to the rules of State aid for banks drafted by the European Commission1, if a bank is seeking State aid, its subordinated creditors and other holders of hybrid capital must contribute to reducing the capital shortfall to the maximum extent (burden-sharing). Such contributions can take the form of either a conversion into Common Equity Tier 1 or a write-down of the principal of the instruments. The objective here is to minimise moral hazard, particularly by preventing the outflow of the State aid being provided to the beneficiary (the issuer), to subordinated debt holders.

Summary

The Bond Act of 15 January 2015 can potentially contribute to increasing the role of hybrid debt in enterprise funding in Poland. Sector-specific regulations will also play an important part in that process. This is particularly the case of prudential standards incumbent on banks and the rules of State aid for the banks affected by the consequences of the financial crisis. One can expect that many hybrid finance related issues will arise in the course of the legislative work aimed at implementation of the EU directive on the recovery and resolution of financial institutions.2

Subordination after winding up of a company

One of the unique features of subordinated debt, which invites parallels with equity capital, are modified creditor ranking rules. Issue terms and conditions can state that in the event of the issuer’s bankruptcy or liquidation debt claims from the bond (if unsecured) would be paid after all the other creditors had been paid off. Thus, subordinated bond holder’s claims strongly resemble the right of a shareholder to receive the liquidation amount after a company had been wound up, i.e. they can be fulfilled after the company fulfils all of its other debt obligations.

The bond holders are “rewarded” for their subordinate position in the hierarchy of creditors with an attractive interest rate, which exceeds the yield obtained from collateralised obligations.

The lack of collateral backing is a typical feature of subordinated debt as it enables the issuer to arrange the priority of creditors.

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- gained extensive experience in conducting litigation and arbitration
- participated in projects aimed at optimising legal and tax structures of companies and capital groups, involving the use of financial instrument based solutions
- completed numerous analyses of the international aspects of economic activity, particularly relating to resolving issues of jurisdiction: determination of the applicable jurisdiction and of the coverage of national and foreign legal regulations addressed to entities subject to financial supervision
- he works with the law firm D.Dobkowski sp.k. affiliated with KPMG in Poland since 2000

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1 Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (‘Banking Communication’).

One click from insurance – are Poles ready for digital channels? The expectations and behaviour of digital consumers and effective strategies for insurers

The report was based on quantitative and qualitative research on a representative sample of Polish digital consumers in a collaboration between KPMG in Poland and Millward Brown. For the purposes of the research, digital consumers were defined as people who use the internet daily and mobile internet at least once a week. Qualitative research was conducted among 36 digital consumers in the 25-60 age group. The purpose of the qualitative research was the weekly observation of digital consumers' behaviour and preferences recorded online, and an in-depth understanding of the causes of different behaviours, preferences and phenomena based on six focus group interviews (FGI). Quantitative research was conducted by Computer Assisted Web Interview (CAWI) on a representative sample of 901 digital consumers (including 600 people who were surveyed for their insurance preferences; the group included 348 heavy users of digital channels and 814 digital consumers who hold insurance policies). The aim of the quantitative research was to survey the prevalence of observed behaviours and preferences in Polish digital consumers aged 18+. Apart from the research results the KPMG report contains anticipations of Polish insurance market development and the KPMG recommendations how to build effective strategies of insurers in response to the growing segment of the digital consumer.

Luxury market in Poland. Polish premium and luxury brands. 2015 edition.

The theme of the sixth KPMG publication on the luxury market in Poland were Polish premium and luxury brands. For the purposes of the report, it was assumed that a Polish premium or luxury good is any good that bears a brand that is widely recognised in Poland as premium or luxury or which, due to its specificity (uniqueness, high price, etc.), takes on such a character. In turn, a Polish brand is one that belongs to a company with majority Polish equity or has Polish roots (historic) and is still produced in Poland. The report presents the results of research carried out on a group of 305 respondents in September 2015 using the CAWI method. The criterion for the selection of respondents were earnings in excess of PLN 7,100 gross per month. The analysis was complemented by a survey of companies owning Polish premium and luxury brands, which produced 24 completed questionnaires. Representatives of the selected companies answered questions concerning the history of their brands, the situation in their market segment, barriers to development, marketing communication channels, customer characteristics and the role of foreign markets. The report also includes a presentation of leading Polish premium and luxury brands, which is preceded by an analysis of more than a hundred subjectively selected brands. The report also uses data from Euromonitor International, Eurostat, the Polish Statistical Office, the Ministry of Finance, the National Bank of Poland, the Polish Yachting Association, Credit Suisse and the Economist Intelligence Unit.
**Pulse of Economy 2015**

The KPMG CEE report is based on a survey conducted in September 2015 among 731 medium and large companies in 9 countries in Central and Eastern Europe: Poland, Czech Republic, Slovakia, Hungary, Romania, Bosnia and Herzegovina and the Baltic countries. The questions concerned both the individual situation of companies as well as general issues such as the attractiveness of Poland and other countries of Central and Eastern Europe for investors.

**Property Lending Barometer 2015**

The KPMG CEE survey results are based on answers given by more than 90 financial institutions operating in the real estate sector in 21 countries. Representatives of leading financial institutions gave their opinions during in-depth interviews on key issues in real estate lending. The economies included in the survey were divided into the following categories: largest (Italy, Germany, Spain, United Kingdom), stable (Poland, Austria, Czech Republic, Norway, Slovakia, Sweden) and less stable (the Baltic states, Bulgaria, Croatia, Cyprus, Greece, Hungary, Romania, Serbia and Turkey).

**The automotive industry, Q3/2015 Edition**

The report is part of a series of quarterly reports the objective of which is to present current trends in the automotive industry in Poland, covering the market for new cars as well as industrial production and automotive financial services. The analysis is based on the latest available registration, statistical and market data. The publication is a joint venture of the Polish Automotive Industry Association and KPMG in Poland.

**Key Procurement Challenges – challenges and development directions of Polish procurement organisations**

The objective of the report by KPMG in Poland was to look at trends concerning the operation of procurement teams in companies in Poland and to determine how they are developing. As a result, it was possible to identify their strengths and areas for improvement and to identify the key challenges they face. The survey covered a group of 100 purchasing organisations. The survey was conducted during August-September 2015 using online questionnaires and in-depth interviews with representatives of selected organisations – the purchasing directors and managers. The evaluation and benchmarking of the maturity level of purchasing organisations was carried out using elements of KPMG’s Procurement Maturity Assessment (PMA) method, which involves 11 areas and more than 500 detailed questions that verify the level of advancement of an organisation and any gaps to fill along with the expected financial effect of the implementation of changes. The participants were selected specifically from the largest Polish organisations from all sectors of the economy, of which almost 46% in the last financial year had revenues exceeding PLN 500 billion.
Monitoring a company’s strategy and risk management process

The KPMG Global Pulse Survey 2015 was prepared on the basis of a survey conducted among 1,135 members of supervisory boards, audit committees and senior management from 28 countries, including Poland. The survey was conducted from 30 June to 30 September 2015.

Anti-Bribery and Corruption: Rising to the challenge in the age of globalisation

The research covered a group of 659 respondents from 64 countries responsible in their companies for the prevention of corruption, of which 128 are based in the Central and Eastern Europe that do not belong to groups listed on stock markets the United States or the UK. Among the respondents were 10 large Polish enterprises, including companies listed on the Warsaw Stock Exchange.

Family Business Barometer

The objective of KPMG’s fourth European study conducted in selected European countries was to get an insight into the specific profile of family businesses – the issues they encounter, the changes they are looking forward to and the strategies they implement within their organisations. The Family Business Barometer was driven by the Computer Assisted Web Interview method (CAWI) and rolled out from 1 May until 5 July 2015. Polish family-run companies have been covered by the survey for the third time. The survey generated 1,401 responses, including 131 from Poland. The European part of the survey analysed responses from the following 25 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Spain, Netherlands, Ireland, Lithuania, Latvia, Malta, Germany, Poland, Portugal, Romania, Slovakia, Sweden, Hungary, the UK and Italy.

A New World of Opportunity: The Insurance Innovation Imperative

The KPMG International report is based on a survey conducted in March and April 2015 among representatives of the insurance industry from 20 countries (including Poland). The survey involved 280 respondents, of which 59% came from Europe, 25% from North America and 10% from Australia.
KPMG w Polsce od 1990 roku świadczy usługi z zakresu audytu, doradztwa podatkowego, księgowego, rachunkowego oraz doradztwa biznesowego, a stowarzyszona z KPMG w Polsce kancelaria prawna D.Dobkowski sp.k., kompleksowe usługi prawne. Zatrudniamy ponad 1 300 osób w siedmiu biurach zlokalizowanych w Warszawie, Krakowie, Poznaniu, Wrocławiu, Gdańsku, Katowicach i Łodzi.

Doradzamy polskim i międzynarodowym firmom oraz instytucjom ze wszystkich sektorów gospodarki, ze szczególnym uwzględnieniem branży dóbr konsumpcyjnych, usług finansowych, private equity, motoryzacyjnej, nieruchomości i budownictwa, technologii informacyjnych, mediów i komunikacji (TMT), transportowej (TSL), produkcji przemysłowej, a także sektora publicznego.

U podstaw sukcesu KPMG leżą wysoka jakość oferowanych usług oraz ludzie, których kapitałem jest wiedza zgromadzona przez 174 tysiące pracowników w 155 krajach świata. Dzięki temu świadczymy usługi kompleksowo, a jednocześnie każdego Klienta traktujemy indywidualnie.

Prowadzimy szereg aktywności wspierających rozwój przedsiębiorczości w Polsce. Dzielimy się wiedzą i doświadczeniem uczestnicząc w wydarzeniach merytorycznych, konferencjach, seminariach, szkoleniach czy warsztatach skierowanych dla biznesu. Współpracujemy również z izbami handlowymi i stowarzyszeniami branżowymi oraz przygotowujemy publikacje i opracowania dotyczące różnych gałęzi gospodarki.

W KPMG rozumiemy także, że w dzisiejszym świecie istotne jest nie tylko efektywne zarządzanie kapitałem firmy, ale też jej udział w przedsięwzięciach służących rozwojowi społeczności lokalnych i ochronie środowiska naturalnego. Wartości i misja KPMG sprawiają, że naszą strategię realizujemy w sposób społecznie odpowiedzialny.

Zapraszamy do współpracy wszystkich, którzy potrzebują sprawdzonego partnera w biznesie.