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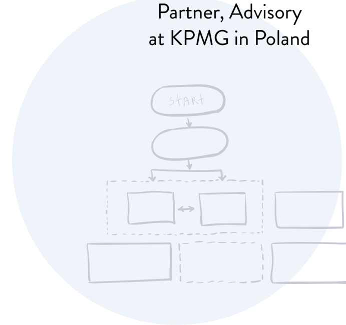

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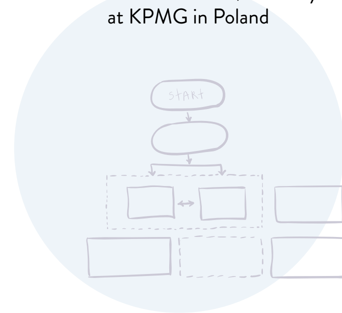

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Standard audit file:

A CHALLANGE FOR IT SPECIALISTS

IMPLEMENTATION OF A STANDARD AUDIT FILE IS A CONSIDERABLE CHALLENGE NOT ONLY IN REGARD TO TAX BUT ALSO IT PURPOSES. ANDRZEJ TAJCHERT – A PARTNER AT KPMG IN POLAND,ANSWERS THE QUESTIONS OF THE "TURNING POINT" MAGAZINE.

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Andrzej has over 20 years of professional experience in, among others, the implementation of information systems, both as a software manufacturer and a client. He also managed IT departments and large implementation teams in Poland and abroad.

At KPMG, since 2004 he has lead-projects related to the management of organizational and process transformation associated with the change of IT tools and the development of new digital technologies. Andrzej conducts audits of problematic IT projects and implements recovery programmes.

PUNKT ZWROTNY (PZ) » Standard Audit File (SAF) is a topic that many of our Clients have recently been interested in. This was evident at the latest KPMG Tax and Accounting Congress, as well as in the latest webinar, which encompassed over 700 registrations … why is that so?

ANDRZEJ TAJCHERT (AT) » Indeed, this topic arouses not only interest, but also emotions. This is due to the fact that tax payers – big companies from 01.07.2016, and medium and small ones from 01.01.2017 – will have to, at the request of atax audit authority, present most of the data from their financial and accounting systems, and mandatorily send in VAT registers. These will require considerable detail – including precise lines of invoices or inventory movements. It is an enormous amount of information, essentially a disclosure of the company's finances "from the inside" – what, from whom and for how much we buy and sell, and how accounting of these activities is kept.

PZ » Why are companies afraid of disclosing such data to tax audit authority?

AT » They are primarily afraid of data leakage. The Ministry has just started to develop new regulations concerning e.g.the encryption of SAF data transmission to the MF website. There are also no regulations and clear procedures explaining to whom and how this data can be disclosed. The current regulations were adapted to paper documents, not to mass electronic data. One has to realizethat these files will also include personal data, e.g. in SAF from our electricity supplier.

PZ » Why then does the Ministry of Finance implement such a risky instrument?

AT » It is inevitable. In order to efficiently control the operations of modern companies, there is no other way than to collect the entirety of their data and control it with specialized software that will search for irregularities or deliberate actions which result in lowered taxes. Indeed, this is a global trend. SAF is an initiative launchedby OECD. There are countries, such as Portugal or Brazil, where electronic systems of economic transaction control have been in use for some time.

PZ » And Poland has been building on their experience?

AT » Yes, although the format of the Polish SAF files is, unfortunately, different from the standard proposed by OECD.

PZ » Unfortunately?

AT » Yes, in my opinion the Polish SAF will not allow for effective analyses of the links between particular pieces of data, e.g. between invoices and payments, or deliveries and invoices, especially in such complicated cases as one payment made for many invoices and deliveries. Assuredly, taxpayers will have to change the file content after the implementation of SAF.

PZ » This is, as far as I understand, a task for the Ministry of Finance. What is KPMG working on in the context of SAF?

AT » The implementation of SAF by the taxpayer is a joint IT-tax undertaking. IT, because there needs to be created a SAF-generating instrument. Tax, because simply downloading the data from the system or systems will produce an unacceptable effect as far as presenting such data to tax audit authorities is concerned. Data, types of transactions and accounting methods have to be analysed in terms of tax, so that the result is as close to what the Ministry expects in terms of compatibility, e.g.with VAT returns. I focus on the SAF topic from the perspective of IT advisory, at the same time cooperating closely with the Tax Department.

PZ » What factors may cause difficulties for companies when preparing SAF?

AT » There are many such factors: data stored in many systems, usage of older versions of software that are not supported by the producers, complicated business processes, especially regarding logistics and accounting, but also inflexible corporate financial systems operated globally.

PZ » Could you elaborate a bit more on the last example?

AT » Global concerns centralize their IT systems,atrend which has beenvery visible recently. The result is, however, a decrease intheflexibility of changes for particular countries, since they have to be coordinated globally. Often their service is outsourced to low-cost locations such as India. Agreeing on and implementing changes in such a situation is complicated and time consuming, especially if the team in Poland no longer has people with expertise in computer science.

PZ » Should a company that has all the data in one integrated system with the support of the producer be concerned then?

AT » Unfortunately, yes. Many producers have stated that it is impossible to provide a turnkey solution early enough for all clients. It is mainly due to short time and various solutions applied in companies regarding account planning, transaction codification and preparation of VAT returns. A universal tool would have to be very widely configurable. In addition, many customers have modified standard systems, and these modifications may cause the manufacturer's tool not to work properly. Of course, there will be companies where applying the producer's standard tool will havea sufficient effect. Nevertheless, due to potential problems regarding the data content, for example, as a result of human error or historical conditions, tests will be necessary. In our nomenclature, we call this validation.

PZ » I understand that validation should be performed in every case?

AT » Absolutely. Regardless of where we will be generating SAF, it is always worth making sure it is correct.

PZ » Thank you for your time!

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Jan specializes in enterprise management consulting. He is experienced in, among others, market strategy consulting, restructuring, estimating market and investment potential, process improvements and designing organisational structures. Jan joined KPMG in 2006 and since then has been providing services for entities from telecommunications, energy, production and financial industries.

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Katarzyna specializes in procurement consultancy to support entities from the private and public sectors. She has been working on designing and implementing improvements in the scope of procurement organization structures, process efficiency and procurement tools as well as procurement category strategies. Katarzyna has experience in, among others, centralization of procurement functions and implementation of sustainable costs and process improvements based on procurement strategies. Her experience covers financial, power, transport, production industries and public administration.

4 STEPS TO DEVELOP PROCUREMENT ORGANIZATIONS

PROCUREMENT UNITS IN POLAND HAVE BEEN GOING THROUGH THE PROCESS OF COMPLEX TRANSFORMATION WHICH GRADUALLY REDIFINES THEIR ROLE IN A COMPANY. PROCUREMENT AREA IS CHANGING FROM THE FUNCTION OF ADMINISTRATIVE EXECUTION OF ORDERS TO ONE OF THE KEY ELEMENTS OF A COMPANY SUPPORTING ITS STRATEGIC DEVELOPMENT.

Such conclusions can be drawn from the study on procurement units conducted by KPMG in Poland. An average score of surveyed Polish organizations reflects the stage in which the procurement unit begins the strategic management of the area and the realization of process and cost synergies. This stems from managers' raising awareness regarding strategic potential of a well-organized procurement area. The value, which an effective procurement function can provide, is not only an efficient consolidation of expenses which leads to a balanced cost optimization, but also effective risk management and even the source of competitive advantage.

HOW TO BUILD PROCUREMENT VALUE?

STEP 1.

Define the strategic role of procurement area as well as set and implement priorities for procurement function development.

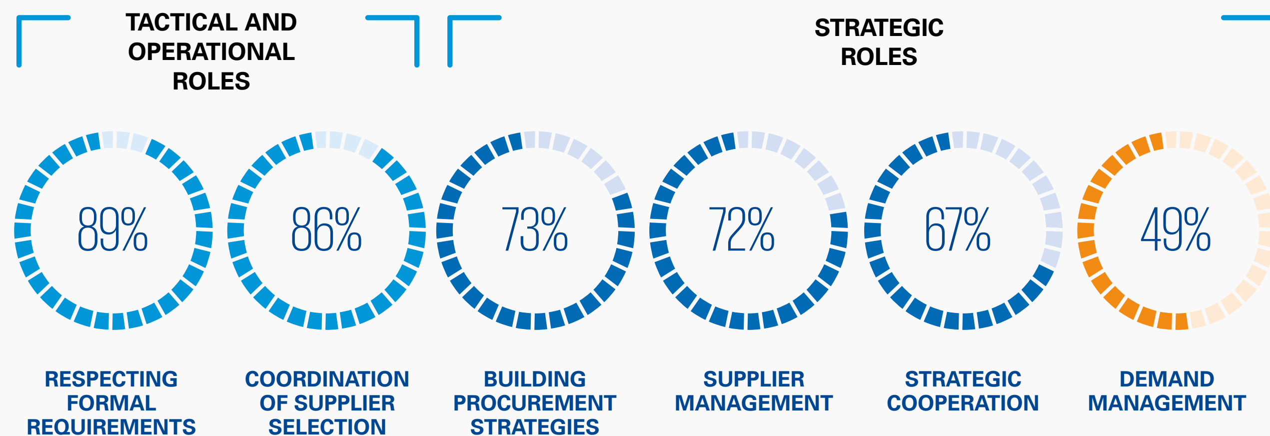
The evaluation of procurement maturity function of Polish companies indicates that the majority of them (around 75%) are still at an early or, at most, middle stage of maturity. They are transformed from the role of "procurement process coordinator" to the role of "initiators of cost-effectiveness initiatives".

Source: A report by KPMG in Poland "*Key Procurement Challenges* – challenges and development directions of Polish procurement organisations", 2015

The priorities of many organizations move from aspects of operational effectiveness to more strategic elements. The traditional perception of the role of procurement concerned tactical processes (preparation and conductiing of RFx, negotiations with suppliers) and operational processes (executing orders, monitoring the execution of contracts). The companies were focused on improving processes (74%), cost reduction (72%) and tool implementation (68%).

It is heartening that nowadays an increasing number of entities recognizes the role of procurement in strategic elements – building category management strategy (73% of responses), supplier management (72%), strategic cooperation with a business partner (67%) and management of internal demand, as well as constructive questioning of the status quo. The advanced procurement unit bring added value to a wide range of strategic initiatives for, among others, development of new products or transformation of business models (e.g. outsourcing).

WHAT ROLE DO THE PROCUREMENT AREA EMPLOYEES PLAY IN PROCUREMENT PROCESS REALIZATION?



Source: A report by KPMG in Poland "*Key Procurement Challenges* – challenges and development directions of Polish procurement organisations", 2015

STEP 2.

Measure and communicate the effectiveness of procurement function.

The research results indicate that more than 25% of organizations do not measure the effectiveness of procurement function.

Companies concentrate mainly on operational efficiency, e.g. timely delivery. Moreover, 30% of organizations report results only for purposes of internal needs of procurement functions. A considerable challenge is the so-called procurement controlling, which includes, among others:

- **measurement of procurement function effectiveness** from various perspectives: "business", procurement function and procurement controlling,
- **the aims of procurement area** which result from business goals and company strategies as well as their decomposition into team structures (strategic, tactical and operational areas),
- **effectiveness measures and reporting structure** (the so-called Balanced Scorecard) going beyond the level of simple savings, e.g. cost effectiveness, process efficiency, team effectiveness, etc.,
- **systemic solutions** allowing an ongoing access to the characteristics of the realized procurement (the number and degree of centralization of suppliers, expenditure values in categories, level of implementation of the procurement plans, scale of process exceptions).

STEP 3.

Develop the right strategies for category management.

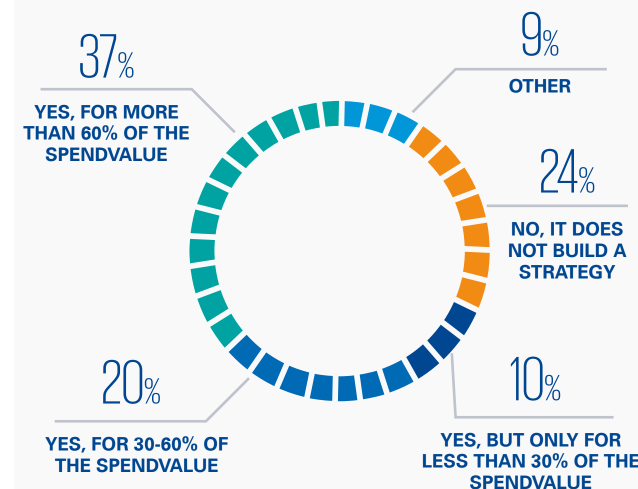
As many as 67% of procurement organizations develop strategies for category management. On this basis, they define saving and improvement potential, the so-called procurement levers. Properly developed strategies allow to avoid routine and support innovative businesses.

Usually, the following are analysed within procurement strategies: characteristics of procurement process in category, number and sources of submitted demands, database of potential suppliers, market trends concerning product and service changes, alternative procurement models (more complex services/products, outsourcing of chosen processes, etc.), rules of effective choice and cooperation with a supplier. Unfortunately, in many organizations procurement strategy still remains merely a document; what is more: it is a document business does not fully identify with.

Effective operationalization is critical in order to achieve complete success of the initiative. Category managers should work closely with their business partner at the stage of developing procurement strategy, and then establish mutual goals resulting from its realization at the stage of RFx.

Equally important is the proper definition of business objectives for the given procurement category influencing strategy goals. In many cases for the more mature organizations these targets should be non-financial in nature. It is more critical to ensure continuity, quality, timeliness, or even establish a relationship with the contractor (e.g. implementation of innovative solutions which give a competitive advantage). In some cases, it will be more appropriate to performmake vs. buy analyses and create complex business case. In other cases, the strategy will constitute simplified guidelines for the implementation of cost synergies and product standardization (e.g. at capital group level).

DOES THE PROCUREMENT UNIT PREPARE STRATEGIES FOR CATEGORY MANAGEMENT?



MAIN CHALLENGES:

- defining priorities to develop strategies
- excessive emphasis on cost reduction
- estimation of implementation benefits
- taking into account qualitative and social aspects
- operationalization of procurement strategies

Mature procurement organizations map qualifications, define gaps in competences and start long-term development programmes which are very often connected even with certification. In one of them, at least 25% of procurement unit's objectives are related to development of the employees from this area. Depending on the employee's needs a comprehensive training programme at the basic and advanced levels is implemented there.

STEP 4.

Take care of employee development.

The procurement area will be a business partner for other organization units if their members are properly trained and perceived as procurement experts, in addition to being seen as a support in the area of formalities and processes. Still, more than 20% of organizations do not deliver training programs in this function to their employees. Mature procurement organizations map qualifications, define gaps in competences and start long-term development programmes which are very often connected even with certification. In one of them, at least 25% of procurement unit's objectives are related to development of the employees from this area. Depending on the employee's needs a comprehensive training programme at the basic and advanced levels is implemented there. Focus is put on translation of theoretical knowledge into actual business practice – each participant develops a project within the programme, which they then implement in his procurement organization.

Despite many positive changes, still 35% of organizations spend 16 hours or fewer on training courses within a year; such training courses are mostly limited to further lessons regarding negotiation, amendments to the public procurement lawor procurement tools. It is difficult to expand a truly strategic team of procurement experts in such a way.

JUNE 17, 2016, IS THE DATE OF THE APPLICATION OF LEGISLATIVE CHANGES RELATED TO THE REFORM OF THE AUDIT MARKET IN THE EUROPEAN UNION, WHICH WERE APPROVED BY THE EUROPEAN PARLAMENT IN APRIL 2014. THE MAIN REFORM OBJECTIVES ARE ENHANCING THE INDEPENDENCE OF STATUTORY AUDITORS AND AUDIT FIRMS OF PUBLIC INTEREST ENTITIES (PIES), THE IMPROVEMENT OF THE QUALITY OF AUDIT OF FINANCIAL STATEMENTS AND STRENGTHENING PUBLIC OVERSIGHT OF THE PROFESSION.

AUDIT REFORM: assumptions and FAQ

POINT BY POINT

It is fair to say that the reform redefines the relationship between the PIEs and the statutory auditor, and that in terms of non-audit services (NAS) performance the reform goes much further than the currently applicable IESBA's Code of Ethics or the US SEC regulations. The changes affect also the auditedentity, e.g. in the scope of the role and responsibilities of audit committees or the requirements and penaltiesfor members of company bodies.

KEY PREMISES OF THE REFORM:

- mandatory rotation of audit firms of a PIE,
- introduction of new restrictions on the performance of non-audit services for PIEs,
- increasing the scope of the statutory auditor's report and the introduction of the requirement to prepare an additional report for the audit committee,
- enhancing corporate governance in a PIE and increasing responsibilities of the audit committee,
- providing independent and competent supervision over the profession of statutory auditor and the operations of audit firms.

PART I

MANDATORY ROTATION OF AUDIT FIRMS OF A PIE

The presented table summarizes the requirements for rotation of audit firms resulting from Regulation No. 537/2014 in comparison with the proposals contained in the draft act by the Ministry of Finance (MOF) published in April 2016 on Certified auditorsand their self-government, entities authorized to audit financial statements and on public oversight.

	REGULATION 537/2014	DRAFT ACT
AUDIT FIRM ROTATION (PIE)	• **Base period:** 10 years • **Option to extend the period after a tender:** up to 10 years (or 14 years, if more than one firm has been chosen, the so-called joint audit) • **Option to extend the period by 2 years** (with permission of the competent authority) • **Cooling off:** 4 years	• **Base period:** 10 years • **No option to extend** • **Option to extend the period by 2 years** (with permission ofthe Polish Audit Oversight Commission.) • **Cooling off:** 4 years
MINIMUM PERIOD OF EMPLOYMENT OF AUDIT FIRM	• **Minimum:** 1 year • **Application:** only PIE	• **Minimum:** 2 years • **Application:** all entities

FAQ

ARE THERE ANY EXCEPTIONS REGARDING EXTENSION OF MAXIMUM TENURE WHICH ARE BEYOND THE REQUIREMENTS ADOPTED BY MEMBER STATE?

According to the Regulation, at the request of the audited entity, the competent national regulatory or supervisory authority may extend only once the maximum tenureby two years due to "exceptional circumstances". The extension can only be applied at the very end of the auditor relationship. The draft act published by the Ministry of Finance provides such possibility.

WILL ALL ENTITIES WITHIN AN EU CORPORATE GROUP BE REQUIRED TO ROTATE AT THE SAME TIME?

Two cases should be considered:

1. EU PIE parent with non-PIE subsidiaries.

Every EU PIE will be obligated to comply with the rotation requirements applied in the country where it is incorporated. The EU PIE parent company auditor will rotate in line with the national law of the Member State where the PIE parent is incorporated. Although the subsidiaries are not PIEs in their own right and therefore not subject to mandatory

rotation it can be expected thatthe PIE parent company auditor and non-PIE subsidiary auditors will rotate at the same timeif the parent entity requires an auditor from the same network.

2. EU PIE parent with an EU PIE subsidiary.
The PIE subsidiary auditor rotation period in Member State where PIE subsidiary is incorporated may be a different period than that applying to the PIE parent. If the subsidiary period is longer than the parent period, then from a practical standpoint if the parent company preferred to have just one auditor for the entire group it can also dictate when the auditor is rotated. However,if the subsidiary's national rotation period is shorter than the parent's national rotation period then the subsidiary will have to rotate even if the parent retains its existing auditor.

HOW DO THE MADNATORY ROTATION RULES APPLY TO NON-EU COMPANIES?

If a non-EU parent has controlled undertakings in the EU, and any of these controlled undertakings are PIEs in their own right, then the PIE's controlled undertakings will have to rotate their statutory auditor in line with the national law of the Member State where they are incorporated. If a PIE parent in the EU has non-EU controlled undertakings, then those undertakings are not caught by the PIE definition and therefore they are notrequired to rotate their auditor.

DOES THE PERIOD BEFORE THE ENTITY BECAME A PIE COUNT TOWARDS TOTALAUDIT TENURE?

In order to establish the auditor tenure for the purposes of rotation, the period before the year in which the company becomes a PIE is not taken into account. This position has been confirmed by the European Commission.

PART II

RESTRICTIONS ON CERTAIN NON-AUDIT SERVICES PERFORMED BY THE PIE STATUTORY AUDITOR

The statutory auditor (and any member of their network) carrying out the statutory audit of a PIE is not allowed to directly or indirectly provide to the audited entity (to its parent undertaking or to its controlled undertaking within the EU) any prohibited services from the so-called "black list", which were presented in the table.

THE LIST OF PROHIBITED SERVICES – REGULATION NO. 537/2014

A. Tax services relating to:
   I. preparation of tax forms*,
   II. payroll tax,
   III. customs duties,
   IV. identification of public subsidies and tax incentives unless support from the statutory auditor or audit firm in respect of such services is required by law*,
   V. support regarding tax inspections by tax authorities unless support from the statutory auditor or audit firm in respect of such inspections is required by law*,
   VI. calculation of direct and indirect tax and deferred tax*,
   VII. provision of tax advice*.

B. Services that involve playing a part in the management or decision making of the audited entity.

C. Bookkeeping and preparing accounting records and financial statements.

D. Payroll services.

E. Designing and implementing internal control or risk management procedures related to the preparation and/or control of financial information or designing and implementing financial IT systems.

F. Valuation services, including valuations performed in connection with actuarial services or litigation support services*.

G. Legal services, with respect to:
   I. the provision of general counsel,
   II. negotiating on behalf of the audit entity,
   III. acting in an advocacy role in the resolution of litigation.

H. Services related to the audit entity's internal audit function.

I. Services linked to the financing, capital structure and allocation, and investment strategy of the audited entity, except providing assurance services in relation to the financial statements, such as the issuing of comfort letters in connection with prospectuses issued by the audited entity.

J. Promoting, dealing in or underwriting shares in the audited entity.

K. Human resources services with respect to:
   I. management in a position to exert significant influence over the preparation of the accounting records or financial statements that are the subject of the statutory audit, where such services involve: searching for or seeking out candidates for such positions; or undertaking reference checks of candidates for such positions,
   II. structuring the organisation design; and
   III. cost control.

*** services can be provided under certain conditions (see question 4 on the next page) if the Member State implements this option. The draft act published by the Ministry of Finance provides the possibility to provide these services.**

Primarily, the restrictions on provision of non-audit services will apply to the first financial year starting on or after June 17, 2016.

FAQ

HOW DO THE PROVISIONS ON PROHIBITED SERVICES WORK?

The Regulation contains a list of prohibited services. This requirement is stricter than current requirements, particularly in relation to tax services. Restrictions to the provision of non-audit services apply to the statutory auditor and the auditors from the same network. They should be applied to the audited PIE, its parent undertaking and controlled undertakings established in the EU. The restrictions do not apply to affiliates that are in the possession of a PIE, its parent or subsidiary undertakings established in the EU. The restrictions will also not be applied to sister companies of the givenPIE.

WHEN DO THE NEW NAS RULES START TO APPLY?

On principle, the new requirements will apply to the first financial year starting on or after June 17, 2016. However, in relation to the two categories of services,the requirements should also be applied in the preceding year (the 'cooling-in period'). This means that from January 1, 2016, the certain services cannot be provided for PIEs whose financial year starts on 1 January.

This applies to the following services:

- designing and implementing internal control or risk management procedures related to the preparation and/ or control of financial information,
- designing and implementing financial IT systems.

WHAT ARE THE PERMITTED NON-AUDIT SERVICES?

Services that are not on the list of prohibited services are permitted if the statutory auditor maintainscurrent approach by assessment of possible independence threats and adoption of appropriate safety measures. Approval of the audit committee is neededfollowing an assessment of the threats to independence and the safeguards in place.

WHAT POSSIBILITIES DO THE MEMBER STATES HAVE IN REGARDS TO THE "BLACK LIST"?

Member States may add to the list of prohibitions and may adopt legislationfurther restricting NAS.The Member States may not reduce the catalogue of prohibited services –therefore the Regulation provides the minimum list.

A Member State may still provide, by way of derogation,a number of tax services, as well as valuation services, provided that:

- they have no direct or have immaterial effect, separately or in the aggregate, on the audited financial statements,
- the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee,
- the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor or the audit firm.

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Marcin has many years of experience in managing advisory and delivering assurance services to global multinational firms from various industries. He has led numerous teams which audit financial statements prepared in accordance with Polish and other accounting standards, including IFRS, US GAAP and German GAAP. He has also acted as a quality control or IFRS reviewing partner on a number of audits of stock listed clients. Marcin joined KPMG in 1996 and has been an audit partner and director of audit department at KPMG in Kraków since 2006. Marcin is also a statutory auditor and a member of ACCA.

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Agnieszka joined KPMG in 1994. Shas many years of experience in auditing financial statements of companies from various industries. Since 2007 she has been working in Department of Professional Practice. From 2007 to 2015 Agnieszka was a member of The National Chamber of Statutory Auditorscommission (NCSA) consulting on legal acts, and in 2007–2011 was also a member or NCSA commission of auditing standards. Agnieszka is also a statutory auditor and a member of ACCA.

THE LAST CLOSING OF ANNUAL FINANCIAL STATEMENTS WAS A TOUGH TIME FOR MANAGEMENT BOARDS, FINANCIAL DIRECTORS AND AUDITORS OF POLISH PUBLICLY LISTED COMPANIES. THE HIGHEST WRITE-OFFS RESULTING FROM THE IMPAIRMENT OF ASSESTS (IN TOTAL PLN 30 BILLION) WERE ANNOUNCED. IT IS WORTH TO CONSIDER WHY THEY OCCURED, WHAT THEY MEAN, AND WHAT THEY SIGNALIZE FOR THE FUTRE.

Is this the end of WRITE-OFFS?

The vast majority of companies listed on the Warsaw Stock Exchange (“WSE”) prepare financial statements in accordance with the International Financial Reporting Standards (IFRS). It is especially applicable to companies forming Capital Groups,which are required to apply IFRS to their consolidated accounts. Therefore, the teams responsible for financial reporting must perfectly know and apply dozens of accounting standards falling under IFRS, including the International Accounting Standard 36 (IAS 36), which relates to the impairment of assets.

FOCUSING ON IAS 36

Effective for as long as 18 years, IAS 36 was rarely applied in economically thriving times. The so-called impairment triggers occurred very rarely, while the majority of listed companies had an excess market capitalization in relation to their net asset value.

The situation radically changed in 2015, when (in the light of IAS 36) a whole range of impairment triggers occurred (Table No. 1). It turned out that this accounting standard was a “hot topic” during the closing of the financial year 2015 discussed both by the management boards of companies, as well as between companies and their auditors. Undoubtedly, IAS 36 caused financial directors many sleepless nights in the past few months ...

Table No. 1: Sample impairment triggers occurring in Poland in 2015.

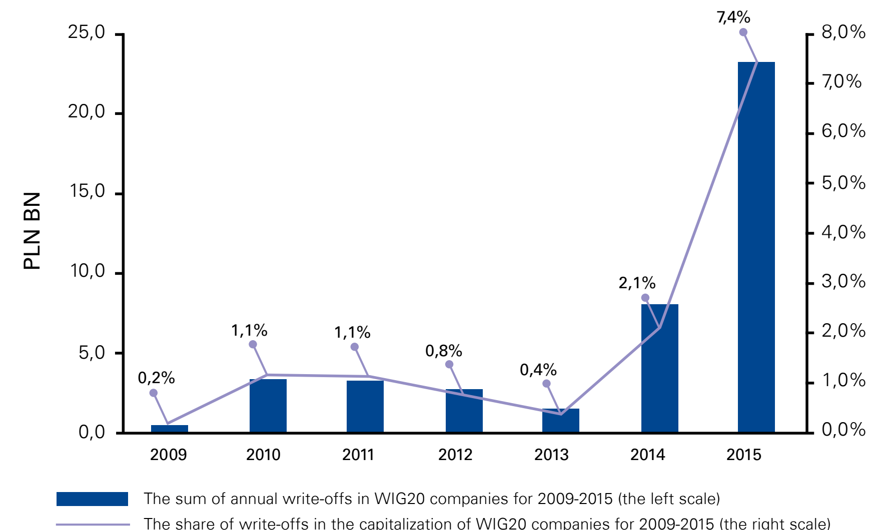
EXTERNAL IMPAIRMENT TRIGGERS	INTERNAL IMPAIRMENT TRIGGERS
Market capitalization falling below the book value of net assets (i.e. P/BV ratio below 1)	**Loss of a key customer**
Depreciation of PLN against major foreign currencies (EUR, USD, CHF)	**Price or volume decline**, decrease in revenues
Fall in the prices of raw materials (e.g. oil, coal, copper)	**Cost increase**
Fall in the product prices (e.g. electricity	EBITDA or EBIT **margin decrease**
New taxes	**The necessity to incur significant investments** which do not produce direct economic benefits (e.g. investments to protect the environment)
Tense international situation (conflicts in Ukraine and the Middle East, the risk of the UK leaving the EU)	**Overdue and uncollectible receivables**
Sanctions against countries of the recipients / clients	**Legal disputes**
	Plans to discontinue or to restructure the operation

Source: KPMG analysis based on point 12 of IAS 36.

RECORD WRITE-OFFS OF POLISH COMPANIES

During the closing of the year 2015, a large number of listed companies had to carry out impairment tests. In many cases, this resulted in unprecedented disclosure of enormous write-offs. For instance, in 2015 the largest companies (from WIG20 group) reported write-offs totalling to an amount of PLN 23.2 billion – three times more than in 2014, which had previously been considered a record level (Graph No. 1).

Graph No.1: Impairments reported by the largest listed companies (WIG20) for 2009–2015



Source: KPMG analysis based on publicly available financial reports

A write-off means that an asset, in which the company previously invested (e.g. shares in another entity, intangible assets including goodwill, but also tangible fixed assets) was presented at an excessive value in the financial statement i.e. value that did not reflect the achievable economic benefits.

When looking at the Polish listed companies from a wider perspective, there were three industries, which revealed the highest value of write-offs in 2015, namely:

POWER INDUSTRY	**PLN 18.0 BILLION**
RAW MATERIALS	**PLN 8.4 BILLION**
PROPERTY DEVELOPERS	**PLN 0.9 BILLION**

Taking into consideration also several other industries,the sum of the reported write-offs for 2015 reaches PLN 30 billion thus achieving an all-time record on the Polish market. The reported high write-offs were mainly caused by simultaneous accumulation of many different impairment triggers. For instance, companies from the power sector were hit by sustained low prices of electricity on the wholesale market accompanied by still increasing generation costs and huge investment needs. However, it should come as no surprise that the main impairment trigger in the raw materials sector was low prices of commodities extracted by Polish companies (copper, hard coal).

WHAT DO WRITE-OFF MEAN IN PRACTICE?

A write-off means that an asset, in which the company previously invested (e.g. shares in another entity, intangible assets including goodwill as well as tangible fixed assets) was presented at an excessive value in the financial statement i.e. value that did not reflect the achievable economic benefits. As a consequence, in accordance with IAS 36, the carrying amount of such asset should be adjusted to

the so-called recoverable amount. On the one hand, such adjustment is reported as a reduction of asset balance (in consequence also net assets), while on the other hand it is reported as cost in the profit and loss account (which negatively affects the reported earnings and some of financial indicators). Therefore, the disclosure of a write-off is always painful for a company and its management board.

WRITE-OFF AND COMPANY'S FINANCIAL SITUATION

Although write-offs resulting from asset impairment are inherently non-cash (a fact often emphasized in the financial statements by management boards), one must remember that the "cash" nature of such write-offs had already occurred at the time of the investment in the given asset. Consequently, there is a link between a write-off and the financial situation of the company. A write-off is often perceived by stock market analysts and investors as a sign of "over-investment" – i.e. wrong investment decisions made in the past. The reasons for this kind of situation may be twofold: either the management board paid too much (which may happen in case of acquisitions of other entities or expansion of production capacity) orthe conditions in which the company operates have changed permanently and significantly in the wrong direction after the investment was made. The analysis of financial statements and the reports of management boards indicate that the latter proves to be a more frequent reason. It can also be observed that companies (both in Poland and abroad) which have changed the management board are tending to disclose higher write-offs – probably as a result of a different approach of the new management board to economic environment and assumptions for impairment tests.

From the point of view of stock market investors, demonstrating a long-term approach, write-offs are not good news and are always connected with decrease in share value – in many cases declining of share prices takes place just before the disclosure of a write-off (as a result of discounting negative information).

FUTURE PROSPECTS

At present everyone is wondering whether the year 2016 will bring Poland another record in terms of write-offs, similar to the one from the last year. On the basis of the first quarter of this year, it can be observed that the list of problems and risks that may occur is longer than the list of opportunities.

In addition to the difficult economic environment in Poland, attention should be brought to the unstable situation in the European Union, unpredictable outcome of the November presidential election in the US as well as the turbulent situation in the East (both in Ukraine and in the Middle East). All of this can negatively affect the perception of Poland by investors for a long time.

From the point of view of stock market investors, demonstrating a long-term approach, write-offs are not good news and are always connected with decrease in share value – in many cases declining of share prices takes place just before the disclosure of a write-off (as a result of discounting negative information).

One of the symptoms of potential asset impairment is the decrease of the index of price to book value (P/BV) below 1. It should not be forgotten that in some sectors (e.g. energy and raw materials industries), despite enormous write-offs, this index still remains well below 1, which can raise the risk of further write-offs in 2016.

High, multibillion-dollar write-offs resulting from asset impairment, though seemingly new in Poland, are nothing unusual in Western Europe and North America. Let's hope that on the one hand Polish financial directors will gain more experience in applying IAS 36, while on the other hand, the market will appreciate these companies whose management boards, instead of hiding unfavourable information about asset impairment, are willing to properly disclose and explain it, at the same time taking heed of the lessons learned from them for the future.

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Marcin specializes in preparing business and intangible assets valuations, purchase price allocations as well as development and reviews of financial models. For several years at KPMG he has been dealing with valuations prepared for the transaction, accounting, legal and tax purposes. Marcin also has extensive experience in issuing Fairness Opinions. He is a graduate of the Warsaw School of Economics and a member of Canadian Institute of Chartered Business Valuators.

When is the purchaser of an enterprise responsible for its debts?

LEGAL BASIS IN QUESTIONS AND ANSWERS

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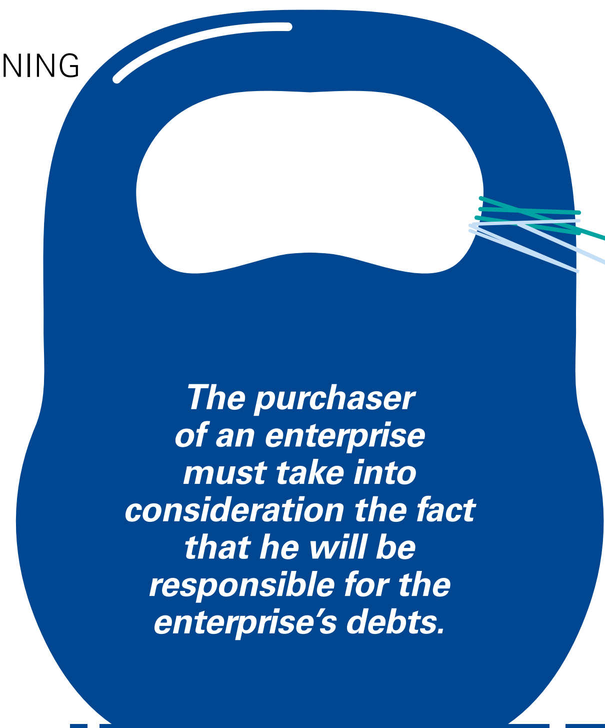
Tomasz specializes in merger transactions and enterprise takeovers. He was responsible for the preparation of due diligence reports and has advised clients during negotiations as well as assisted them in fashioning various M&A transactions. Since 2004 he has been working at D. Dobkowski law firm affiliated with KPMG for international clients and the largest domestic customers. Legal counsellor and a graduate of the Faculty of Law and Administration at Warsaw University and the School of European and English Law run in Poland by the University of Cambridge. Tomasz also completed post-graduate studies in Taxes and Tax Law at the University of Warsaw.

ACQUISITION OF ALREADY OPERATING ENTERPRISES IS A COMMON PRACTICE OF INVESTORS WHO ARE INTERESTED IN TAKING OVER AN ORGANIZATION THAT ALREADY OPERATES ON THE MARKET. HOWEVER, IT SHOULD BE BORNE IN MIND THAT A BUYER, TOGETHER WITH THE COMPANY'S ASSETS, CAN ALSO "ACQUIRE" COMPANY'S DEBTS. BELOW WE PRESENT THE MOST IMPORTANT LEGAL REGULATIONS CONCERNING THIS ISSUE.

1. ARE DEBTS AN INTEGRAL PART OF THE ACQUIRED ENTERPRISE?

Pursuant to the Civil Code, an enterprise shall mean an organized set of tangible and intangible assets intended for conducting business activity. It was also indicated that such assets are, in particular: name of the enterprise, immovable and movable properties as well as rights resulting from concluded agreements. The Civil Code does not indicate among the assets of the enterprise– as was the case until 2003 – debts associated with running it.
Does this mean that the purchaser of an enterprise will not be responsible for the debts incurred prior to the transaction? In principal, unfortunately no.



The purchaser of an enterprise must take into consideration the fact that he will be responsible for the enterprise's debts.

2. DOES A PURCHASER TAKEOVER DEBTS WHEN ACQUIRING A COMPANY?

This question is clarified in Article 554 of the Civil Code, pursuant to which the purchaser of an enterprise together with the transferor are jointly and severally responsible for the liabilities of the transferor related to the enterprise's business. The above-stated solution is called a cumulative assumption of a debt. It means that from the moment of acquisition of the enterprise the existing debtor (i.e. transferor) is joined by a new debtor (i.e. acquirer). As a result, creditors of anenterprise may – at their own discretion – pursue their claims in whole or in part against both debtors, jointly or individually.

Pursuant to the Civil Code, an enterprise shall mean an organized set of tangible and intangible assets intended for conducting business activity.

3. AM I LIABLE FOR DEBTS IF AT THE TIME OF ACQUISITION OF THE ENTERPRISE I DID NOT KNOW ABOUT THEM?

It should be borne in mind that the purchaser's liability will be exclusive if, despite exercising due diligence, he did not know about the debts. Therefore, in order to effectively avoid liability for the obligations of company arising prior to the transaction, the purchaser will have to prove that despite exercising due diligence, it was impossible for him to find out the company's situation. In practice, this comes down to carrying out by the potential investor proper legal, financial and tax due diligence analyses of the company.

The purchaser's liability will be exclusive if, despite exercising due diligence, he did not know about the debts. Therefore, in order to effectively avoid liability for the obligations of company arising prior to the transaction, the purchaser will have to prove that despite exercising due diligence, he had no way of finding out the company's situation.

4. IS THE "ACQUIRED" LIABILITY LIMITED?

In every case the purchaser's liability for debts of the enterprise will be limited. The maximum limit of the liabilities borne by the purchaser in this scope will be determined by the value of the acquired enterprise in accordance with its condition on the day of acquisition, and by the prices at the time of satisfying the creditor.
It is also worth noting that although in practice the most common form of transferring ownership of the enterprise is its sales, the above stated regulations also apply to other forms of transfer, such as e.g. contribution or conversion.

5. HOW TO MINIMALIZE THE RISK OF ACQUIRING AN ENTERPRISE WITH ITS LIABILITIES?

There is no doubt that the described provisions of the Civil Code are quite restrictive. Therefore, in practice, purchasers of an enterprise try to minimize their transaction risk. One of the basic methods of limiting the potential liability of the investor is to obtain a relevant certificate from the tax authorities. In accordance with the regulations of the Tax Ordinance Act, the purchaser of an enterprise shall not be liable for tax arrears of an enterprise which have not been shown in such a certificate.

6. WHAT ABOUT LIABILITY IF AN ENTERPRISE IS ACQUIRED IN THE COURSE OF ENFORCEMENT PROCEEDING?

A special way of acquiring an enterprise is through judicial sale. The transaction is concluded at a public auction or through single-source procurement procedure. The investor concludes the agreement with the manager of the enterprise, previously appointed by the court (more about this problem in the box below).

In every case the purchaser's liability for debts of the enterprise will be limited. The maximum limit of the liabilities borne by the purchaser in this scope will be determined by the value of the acquired enterprise in accordance with its condition on the day of acquisition, and by the prices at the time of satisfying the creditor.

7. WHAT ABOUT LIABILITY IF AN ENTERPRISE IS ACQUIRED IN THE COURSE OF INSOLVENCY PROCEEDING?

One of the basic principles of insolvency proceeding is that sale of an enterprise, which forms part of the bankruptcy estate, is made free of all debts and liabilities of the bankrupt. This means that the investor acquiring the enterprise from the trustee shall not be liable for the debts of the enterprise arising prior to the date of acquisition.This applies both to the private, public-private and, in particular, tax obligations. Creditors of the bankrupt may settle their claims only withthe bankruptcy estate, in particular from funds derived from the price for the sold enterprise.

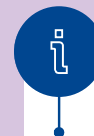
When acquiring an enterprise through enforcement proceeding, the investor will also be liable for the enterprise's liabilities, although significant restriction in this scope was established. Pursuant to the Civil Code regulations, the purchaser's liability shall cover only those liabilities that have been disclosed in the course of enforcement proceeding. The balance sheet prepared by the manager will be meaningful in this case. Creditors, whose liabilities were omitted in the balance sheet, can direct their claims only to the debtor (transferor of an enterprise) or a manager who prepared the balance sheet without taking due care.

CONCLUSIONS

In principle, the purchaser of an enterprise must take into consideration the fact that he will be responsible for the enterprise's debts, despite the fact that they may have arisen before the transaction. The only important exception is the acquisition of an enterprise in the course of insolvency proceedings. However, the law regulations give a potential investor the tools that can significantly reduce this risk. Of particular importance will be the proper preparation of the transaction (due diligence analysis) and a professional preparation of transaction documentation.

Innovations FOR SUCCESS

IN ORDER TO SUCCEED ON THE DYNAMICALLY CHANGING MARKET, EVERY COMPANY NEEDS TO LOOK CONTINOUSLY FOR NEW, INNOVATIVE IDEAS. ONLY MULTIPLE, COORDINATED ACTIONS CAN MAKE IT POSSIBLE TO INTRODUCE PRO-INNOVATION CULTURE INTO DNA OF THE ORGANIZATION.



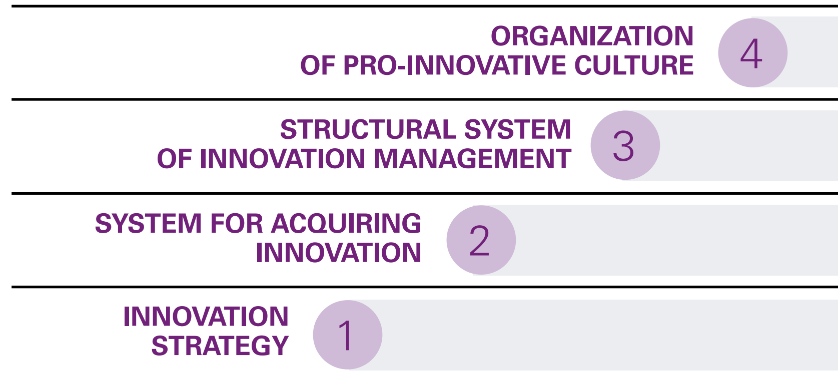
Digital technologies are key driver of innovation – according to Business Insider from May 29, 2015, about 52% of all patents in 2014 were related to the ICT sector. However, also other industries, including aviation, automotive, energy or even FMCG are the subject of the digital changes.

Creation of innovative solutions, their development and implementation, can be realized by a company in different business and operating models (such as those presented in Figure No. 1). Many enterprises naturally prefer a model where they create innovative concepts and manage from the beginning to the end the complete innovation cycle on their own. However, in practice, even the leading "innovators" acquire creative solutions at very different stages of their development (starting from concepts, up to the purchase of innovative solutions/products or licenses) from many different sources.

Figure No.1

THE WAY TO INNOVATION IN AN ENTERPRISE

KPMG's experience shows that market success of most companies- recognized as "innovators" is based **on 4 key elements:**



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Jerzy has over 30 years of professional experience. He has been working at KPMG since 2004. During that time, he has been leading projects in the scope of strategic-operational consulting in almost 20 countries all over the world. Prior to joining KPMG, Jerzy was the member of management and supervisory boards of companies from the sector of new technologies, media and telecommunications (he was, among others, the founder and the chairman of VC focused on digital start-ups). His experience includes participation in research and development projects in the United States and Poland. He is a graduate of the Warsaw University of Technology and the University of Rochester in the USA.

1 **Innovation strategy** providesan answer to the question on what business goals are to be achieved thanks to innovations. The strategy also defines the financial resources that are allocated for the acquisition, development and implementation of innovations. One of its important elements is also an identfication of what kind of innovations are required (e.g. what kind of products, technologies, solutions or improvements of which business processes). From the enterprise's point of view, it is also necessary to determine which innovations should be found outside the organization, taking into account the objective assessment of the internal innovation potential (primarily the competence of the people and experience in the field of innovation).

2 When **acquiring innovations**, enterprises apply various models:

- **purchase of innovation** (products, solutions, licences, etc.) from anexternal provider,
- **internal innovations**, i.e. creation of innovations from scratch inside an organization,
- **internal incubation of innovation,** to create a special environment and infrastructure (of the incubator) within the organization, in which innovative ideas are created and developed,
- **cooperation with external partners** (e.g. R&D centres, external incubators, etc.) to jointly create and develop innovative solutions,
- **innovation "crowdsourcing"** to look for innovative ideas and solutions among the virtually created community (it can include both the organization's employees and external parties),
- **creation of own dedicated corporate venture capital (CVC)**, as a special investment vehicle in developing companies creating or having innovative solutions,
- **financing Venture Capital (VC) type external fund**, which invests into companies creating or having innovative solutions.

In such case, an enterprise usually provides financing based on rules under which other investors participate in the fund; in this case implementation of innovations built by VC portfolio companies within the framework of the enterprise takes place in a strictly commercial way.

In case of large organizations, acquiring innovation is achieved through a combination of different models. External sources of innovation are becoming increasingly important in the current pace of the technology development, and therefore the role of innovation scouting-conducted by dedicated specialists and various strategic partnerships has become considerably more significant.

3 Innovation **management system** in an enterprise enables efficient acquisition, development and implementation of innovations. Such system consists of the following components:

- **selection mechanisms of innovative projects** aligned with the strategy of innovation,
- **system for the acquisition and development of people "innovator" DNA,**
- **business processes and procedures** for managing processes associated with acquisition, development, innovation implementation and risk management,
- **organizational structure and a team of people** dedicated to the supervision of the implementation of innovation management,
- **dedicated controlling system** (financial and business) for innovative projects,
- **KPI system** (Key Performance Indicators) and reporting for monitoring the effectiveness of innovation management.

4 Even the best system of innovation management does not bring the expected results, if the enterprise does not implement the appropriate **pro-innovative culture.**

Factors unfavourable to innovation:

The typical culture of a large organization is the main barrier for innovation. Typically large organizations havey a hierarchical structure, which extends the time of decision-making, base all operation on stranardized, very formalized procedures, and focused in a natural way on risk management.

PRO-INNOVATIVE CULTURE AND ORGANIZATIONAL CULTURE OF BIG ENTERPRISES

Enterprises should devote much more attention to design and implementation of a long-term program of cultural transformation focused on pro-innovation. Activities such as the organization of innovation workshops are only short-term initiatives. The aim of such a transformation program is to create an internal culture of entrepreneurship, stimulating creative thinking and independent decision making, combined with acceptance of the risk inherent for innovation.

Such program may include the following components:

- pro-innovative incentive system,
- system of innovation-oriented values,
- development programs to improve the competences necessary for the development of innovation,
- establishing "innovators" working groups,
- system of sharing knowledge and best practices in the scope of acquisition, development and implementation of innovations,
- promotion pro- innovation activities.

Creative ideas enable the enterprise to create products and services which are competitive on the market, improve technological processes, make use of new materials, and improve the efficiency of business processes orthe operation of the organization.

On the global market, success is achieved mainly by the enterprises that have built the strategy of innovation, have created an effective system of attracting creative ideas and solutions, have implemented a structured approach to managing and are building a culture of innovation.

For several years the capital market has been "rewarding" innovative companies, determining their value much above the market value resulting from cash flow. For example, in the case of Tesla company, occupying first place in the ranking of Forbes' List of the "World's 100 Most Innovative Companies" in August 2015, innovative bonus has been estimated at up to 85% of the value of the enterprise. Being an „innovator" also brings a different kind of benefit - consumers are more willing to buy products and services from them, many journalists prefer to write about them, and additionally they become a more attractive employer for the best and brightest professionals.

RESEARCH AND DEVELOPMENT, with a deduction

POLISH ECONOMY IS FACING A GREAT CHALLANGE OF QUICK IMPROVEMENT OF ITS INNOVATIVENESS. IN RECENT YEARS, OUR COUNTRY HAS MOVED UP THE "INNOVATION UNION SCOREBOARD" EUROPEAN RANKING AND ADVANCED FROM "MODEST INNOVATORS" TO "MODERATE INNOVATORS" GROUP. NEVERTHELESS, THERE IS STILL A LOT OF THINGS TO DO.

Innovative products and services provided for clients are dependenton entailing higher costs for the entrepreneurs on research and development. Currently, the ratio of R&D investments amounts to 1% of GDP and is the lowest in Europe. The structure of these investments also requires some changes. Currently, most of the costs are borne by the public sector. The goals adopted by the government are to increase spending on R&D to 2% of GDP and reverse the current structure of investment – entrepreneurs are supposed to pay more, while smaller research institutes and universities less.

CURRENTLY IN POLAND **THE RATIO OF INVESTMENTS ON** **B&D** AMOUNTS TO **1% of GDP**

THE GOALS ADOPTED BY THE GOVERNMENT ARE TO **INCREASE SPENDING ON R&D** **TO 2% OF GDP**

One of the instruments, that is planned to encourage entrepreneurs to increase spending on R&D, is a recently introduced new tax relief for R&D. This tax relief exists in many countries (e.g. the United Kingdom, Ireland, the Czech Republic and Australia), and is often called "R&D tax credit". The idea is simple – the entrepreneurs, who bear most R&D costs, are entitled to additional tax deductions for expenses incurred on R&D. Also in Poland, since January 1, 2016, entrepreneurs have had the opportunity to benefit from a tax credit for the ongoing work in this area. The new credit, together with the existing possibility of obtaining grants for ongoing R&D works, expands for entrepreneurs the range of possible ways of supporting this type of activity.

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Kiejstut is a tax advisor, the leader of the Grants and Incentives Team, and a member of the international group of experts at KPMG. Kiejstut possesses many years of experience in obtaining credits and grants for enterprises, especially in regards to R+D+I. Since 1998 he has been supporting KPMG's clients in the process of preparation of financing strategies, which then translate into multimillion supporting contracts for entities he worked with. He is experienced in obtaining grants from EU Structural Funds, national funds, EU initiatives and other sources for investments, R&D works, trainings and environmental protection.

Also in Poland, since January 1, 2016, entrepreneurs have had the opportunity to benefit from a tax credit for the ongoing R&D works.

RESEARCH AND DEVELOPMENT WORKS IN MANY SECTORS

Regardless of whether the company has a separate R&D department or not, it is worth remembering that R&D works are not only conducted in laboratories – in many cases, these are activities that an entrepreneur may perform every day. These works include e.g. product improvement, advancements in the production process and testing of new materials to reduce costs.

The list of such activities is long and may be subject to a tax relief for R&D.

R&D WORKS ARE CONDUCTED IN ALMOST EVERY INDUSTRY, FOR EXAMPLE IN THE FOLLWONG SECTORS:

- FOOD
- FINANCIAL
- MANUFACTURING
- SERVICE
- EXTRACTION
- ICT
- AND MANY OTHERS

HOW DOES A TAX CREDIT FOR R&D WORK?

The new tax credit gives the possibility of additional deduction of a certain amount of costs incurred on R&D from taxable base. As a result, the tax payable is reduced. Bonus in the form of a deduction of eligible costs from the taxable base can be:

- **30% of revenues of employees involved in R&D works** (planned increase to at least 50% from 2017),
- **20% (SMEs) or 10% (large companies) of other expenses related to research and development works** (including depreciation). It is planned to increase the deduction corresponding to 50% and 30% respectively.

The costs of R&D should be specified in accounting books. Eligible costs are stated in the tax return.

Unlike grants, in the case of R&D tax credit, the audit on the validity of a tax credit generally occurs only during a tax audit (there are no certification institutions, which were one of the ideas when legislative work on the new relief were taking place).

In view of the above,of great importance are:

- **proper identification of projects and eligible costs,**
- **possession of documents confirming performance of research-development projects and the validity of the allocated costs for the fiscal year in the company.**

Contrary to grants for R&D, the tax credit includes costs already incurred (application for grant must be submitted before the project starts). The tax credit does not apply to taxpayers conducting business within a special economic zone.

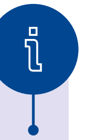
Regardless of whether the company has a separate R&D department or not, it is worth remembering that R&D works are not only conducted in laboratories – in many cases, these are activities that an entrepreneur may perform every day. These works include e.g. product improvement, advancements in the production process and testing of new materials to reduce costs.

OTHER ADVANTAGES OF CONDUCTING R&D WORKS

In addition to the above-stated instruments there are a number of other opportunities to financially support R&D activities in an enterprise, such as:

- **subsidies for equipment and** research-development **infrastructure**,
- **grant programs** for specific business sectors,
- **grants for projects implemented in consortia of entrepreneurs** withresearch units,
- **funding through the "Horizon 2020" programme**.

With wider range of support possibilities, the key for the entrepreneurs is to identify projects eligible for funding and select the appropriate support instrument – tax credit or grant.



POLAND IS ONE OF THE FASTEST GROWING INNOVATORS TOGETHER WITH MALTA, LATVIA, BULGARIA, IRELAND AND THE UK.

POLAND IN INNOVATION RANKINGS

Every year there is an increase in the number of Polish enterprises that invest in R&D. This is confirmed by statistics released by, among others, the European Commission. However there is still a lot of things to do – the EU Industrial R&D Investment Scoreboard report from 2015, which contains a ranking of companies that invest the most in R&D, stated that among 2500 companies surveyed there are none that come from Poland. The report, however, includes an annex with a ranking of companies belonging to so-called "moderate innovators" group in EU28, where 12 out of 100 companies investing in R&D are from Poland. These include, among others, telephone companies, IT, banking sector and chemical industries. In comparison to previous years, where individual investors were pointed out, this result has improved significantly. According to the Innovation Union Scoreboard 2015 report, Poland, similar to 2014, is classified as one of the countries with moderate innovation, called "moderate innovators". Despite this, Poland has improved its innovation indicators in comparison to 2014. The strengths of Poland include, among others, expenditure on innovation, the percentage of the population having higher education and participation of young people with at least secondary education.In the classification of EU28 countries, the innovation leaders are Scandinavian countries. Whereas, Poland is one of the fastest growing innovators, along with Malta, Latvia, Bulgaria, Ireland and Great Britain.

JOINT COMMERCIAL REPRESENTATION WITH A MEMBER OF THE BOARD – unacceptable

COMMERCIAL REPRESENTATION IS UNACCEPTABLE, WHEN THE PROXY CAN WORK ONLY WITH A MEMBER OF THE MANAGEMENT BOARD. DESPITE THE FACT THAT OVER ONE YEAR HAS PASSED SINCE THE RESOLUTION WAS ADOPTED BY THE SUPREME COURT, DUE TO THE RISKS THE ENTREPRENEURS FACE WHEN THEY NOT APPLY THEIR PROCURATION TO THE ADOPTED RESOLUTIONS, IT IS NECESSARY TO REMIND THEM OF IT.

2001

JOINT UNACCEPTABLE COMMERCIAL REPRESENTATION IN THE LIGHT OF PREVIOUS CASE LAW

The admissibility of establishment of the unacceptable joint commercial representation (also called a joint irregular proxy or a joint mixed proxy) was ruled by the Supreme Court in the Act of 27 April, 2001, Ref. no. III CZP 6/01. The above-stated type of proxy was used extensively in business trading. The box at the side shows an example of the entry of the discussed proxy to the National Court Register (NCR).

Box No. 1

THE ENTRY OF JOINT IRREGULAR PROXY TO THE NATIONAL LAW REGISTER

THE NATIONAL COURT REGISTER

(...)

Column 3 – Proxies		
1	1.Surname	X
	2. Names	Y
	3. Personal Identity Number (PESEL)	xxxxxxxxxxx
	4. Type of the procuration	JOINT COMMERCIAL REPRESENTATION WITH A MEMBER OF THE BOARD

2015

THE CHANGE IN THE CASELAW OF THE SUPREME COURT

In the resolution of the Supreme Court adopted by the plenary of 7 judges (extended composition) on January 30, 2015, Ref. No. III CZP 34/14 (hereinafter referred to "the Resolution"), the Supreme Court ruled that establishing a procuration in which the proxy can operate only with a member of the board is unacceptable. From the moment the Resolution was adopted proxies appointed contrary to the accepted interpretation of the Resolution cannot take legal actions on behalf of the company as these may be disputed.

In the Resolution of 2015 the Supreme Court questioned the admissibility of establishing joint irregular proxy and ordered the provincial courts to remove the entries, of the contents similar to the one presented in the box (Box No. 1) or of similar content, from the National Court Register considering them inadmissible.

THE REASONS THE FOR THE CHANGE IN THE REGISTRY OF THE RESOLUTION

The Supreme Court indicated in the Resolution, that the procuration that authorizes the proxy to operate only with a member of the board does not fit in any of the types of procuration authorized by law (i.e. sole commercial proxy, joint proxy, branch commercial proxy); there is also no legal basis to create a new type of procuration by the Board. Granting by the company's management board a proxy to act with a member of the board is an illegal action that exceeds the power of the Board.

WHAT DOES THE RESOLUTION MEAN FOR ENTREPRENEURS?

The interpretation of the Resolution comes into force from the moment of its adoption. Since that time joint irregular proxies cannot take legal actions on behalf of the company. If such actions are taken, they may be questioned.
The interpretation adopted in the Resolution referring the commercial representation does not apply to assessment of the effects of legal actions conducted by proxies who had been appointed unlawfully in an earlier period. These activities remain valid and effective.

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Renata specializes in company law and real estate law. She has extensive experience in legal corporate service for business entities. Since 1999 Renata has been working in D. Dobkowski law firm affiliated with KPMG in Poland. She graduated from the Faculty of International Trade at the Warsaw School of Economics and from postgraduate studies „Copyright law, publishing law, press law" at the Jagiellonian University. She is a member of the District Bar Association in Warsaw (since 2004) and the Regional Chamber of Legal Advisers in Warsaw (since 2008). In 2005 she worked as a lawyer in the Court of Human Rights in Strasbourg, where she conducted legal analysis of complaints against Poland.

WHAT KIND OF ACTIONS SHOULD BE TAKEN BY THE ENTREPRENEUR?

1. Adjust procuration to the interpretation adopted in the Resolution

The resolution resulted in the need to adjust proxies to its interpretation. Entrepreneurs, who on January 30, 2015, used the joint irregular proxy, shall immediately, if they have not already done so, adjust the proxies granted to the company to the interpretation of the Resolution. Until that time legal action on behalf of the company should be taken by the management.

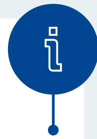
2. Report the change of the procuration to the court

It should be added that proxies can act even before they are entered to the National Court Register. The objective entry, although compulsory, is of declarative character, i.e. it confirms the legal status that occurred earlier.

3. Conduct a legal audit

In case of doubt whether the proxies appointed in violation of interpretation of the Resolution have been – from the moment of its adoption – excluded from making legal actions on behalf of the company, the verification procedures of the company documentation should be conducted in this scope. In case the joint irregular proxies had taken legal actions on behalf of the company – since the adoption of the Resolution – counter-measures should be taken immediately.
It should be noted that the problem of incorrect representation by joint irregular proxies may also apply to contractors of the company. Thus, when company's contracts are concerned, one should verify the representation of the contracting parties

It should be emphasized that although the joint irregular proxy has not yet been removed from the National Court Register thisfact does not entitle him to take legal actions on behalf of the company. For obvious reasons, one should refrain from granting the company (new) joint irregular proxies.



WHAT IS THE SO-CALLED MIXED REPRESENTATION?

At the same time the Supreme Court confirmed in the Resolution the permissibility of defining in the agreement (statute) of the company its form of representation, according to which declaration of intent on behalf of the company may be submitted by the one of the joint proxies or the member of the board. This is possible within the framework of the so-called mixed representation, based on article 205 of the Code of Commercial Companies (373 of CCC).

VAT: knowledge or intuition?

THE DISPUTE OVER WHETHER EASTER IS BETTER THAN CHRISTMAS HAS BEEN TAKING PLACE FOR MANY YEARS, AND THERE ARE NO SIGNS OF THE PROBLEM BEING QUICKLY RESOLVED. SIMILARLY, THE FOREVER PRESSING PROBLEM CONCERNING KNOWLEDGE OF TAX MATTERS BEING MORE IMPORTANT THAN TAX INTUITION HAS ALSO NOT YET BEEN RESOLVED.

In my opinion in 2016 intuition will be the queen, although in autumn last year it seemed like knowledge and interpretation would rule. We were supposed to use intuition to predict the unpredictable Administrative Court sentences, individual and general interpretations and what inspection bodies could come up with in cases which seemed as clear as day.

KNOWLEDGE AND INTRPRETATAION

They were supposed to rule on the basis of a whole set of new tax regulations concerning broadly defined indirect taxes. As previously announced, we were supposed to deal with a completely new

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sales tax for large format stores and a completely new VAT Act. Today, the draft of the latter has been consigned to the rubbish bin, probably for good, together with another one (the third one?), leaving much to be desired version of sales tax. The only thing left is an IT project, rather than a tax one, that is Standard Audit File. That is all for knowledge about novelties.

WHAT DOES INTUITION SAY?

My intuition tells me that SAF will not improve collection of debts even at the assumed low level of 200 million PLN. For a long time the authorities will not be able and will not have meaningful software to analyse the file; instead they will have to fill dozens of posts in the company formed to create the software. Intuition tells me that this company will have a couple of good years ahead, while the software not so much.

Vicious intuition also tells me that sales tax will either come to nothing or will come to something that will irritate the entrepreneurs by putting new administrative regulations on them or may cause another argument with Brussels, bringing little money to the budget. The budget, in turn, will become tighter and tighter and will call for more help.

CHANGES IN VAT ACT

Intuition, this time based on life experience, tells me that after yet another re-examination of the situation, the issue of changing VAT Act will come to light. The first change will concern the lack of changes, i.e. maintainingthe current VAT rates in 2017 and later. The other change will for sure concern the increase of PIT rates for those earning more, or non-increase of the tax-free amount for those taxpayers. Further changes are relatively easy and effective modifications of the current VAT Act. Here come into play the following: reimposition of one month settlement period; verification of the existing VAT payers or lowering the number of the registered ones (because VAT is paid by those who are entitled to exemption from VAT); introduction of tighter controls of refund of excess VAT, or maybe even securing it in a form of a guarantee;introduction of compulsory non-cash settlements for relatively low value of a transaction, reinforcing joint liability of both Parties to the transaction, and unfortunately reintroduction of VAT sanctions.

This is what intuitions suggests. However, knowledge says that in order to do all these things, specialists of creation and control of law are required. The former work in Świętokrzyskastreet – and here nothing has changed. But the latter who control, are now more concerned with what will happen to them after the reform of tax authorities, than chasing tax offenders. What will the future bring? We will see.

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