



Frontiers in tax

Poland Edition

June 2020

In this Issue:

- Tax relief measures in the Tax Ordinance during the COVID-19 pandemic
- Suspension of procedural deadlines during the COVID-19 pandemic: not always used in practice
- Procedural aspects of anti-crisis support for businesses
- Digital communication with public administration authorities
- The new Tax Ordinance

KPMG.pl



In this Issue

Introduction

5

Tax relief measures in the Tax Ordinance during the COVID-19 pandemic

7

Suspension of procedural deadlines during the COVID-19 pandemic: not always used in practice

10

Procedural aspects of anti-crisis support for businesses

15

Digital communication with public administration authorities

18

The new Tax Ordinance

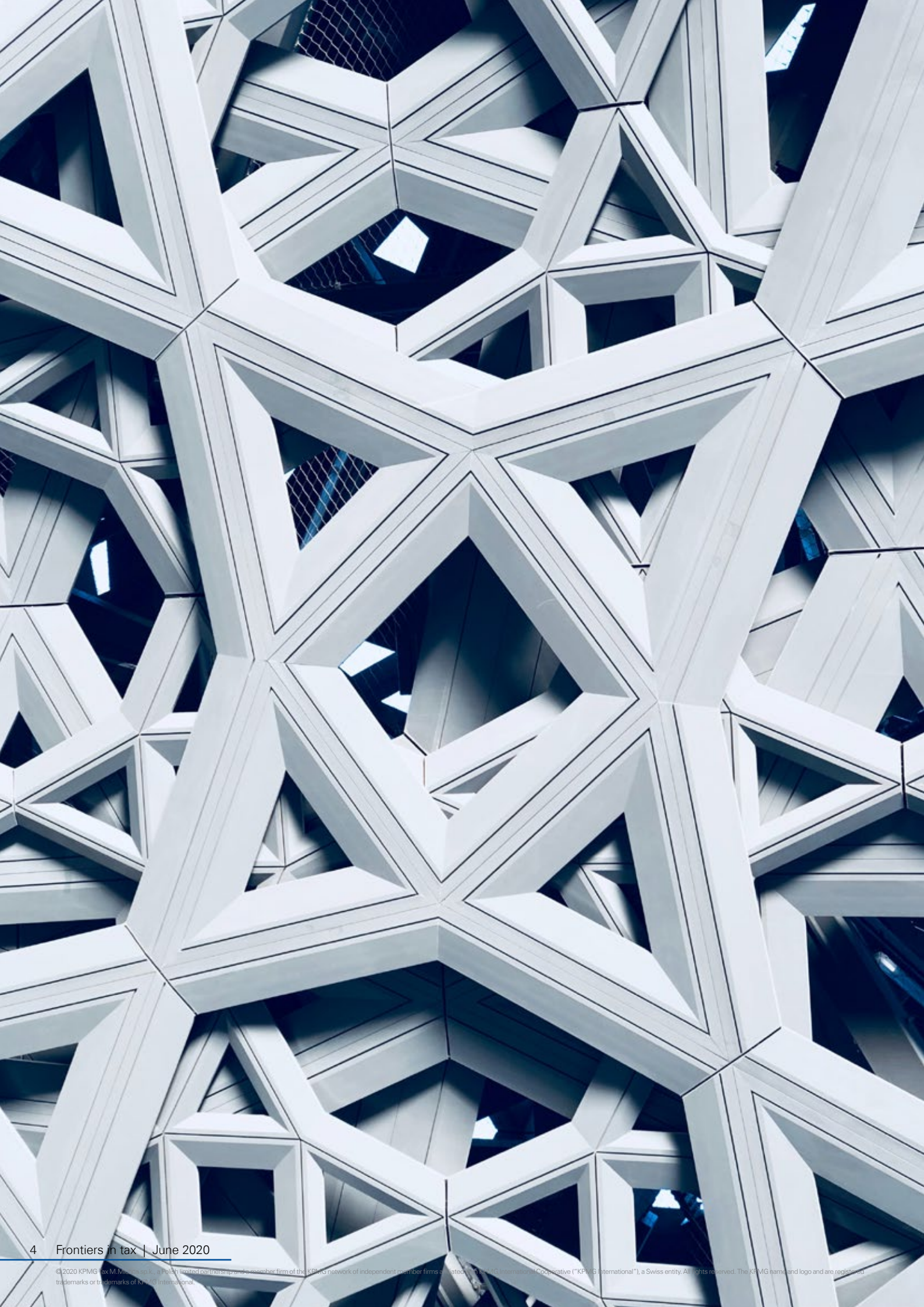
23

KPMG Publications

26

Contact

27



Introduction



Dariusz Malinowski

Partner,
Head of the Tax Litigation Team,
KPMG Poland

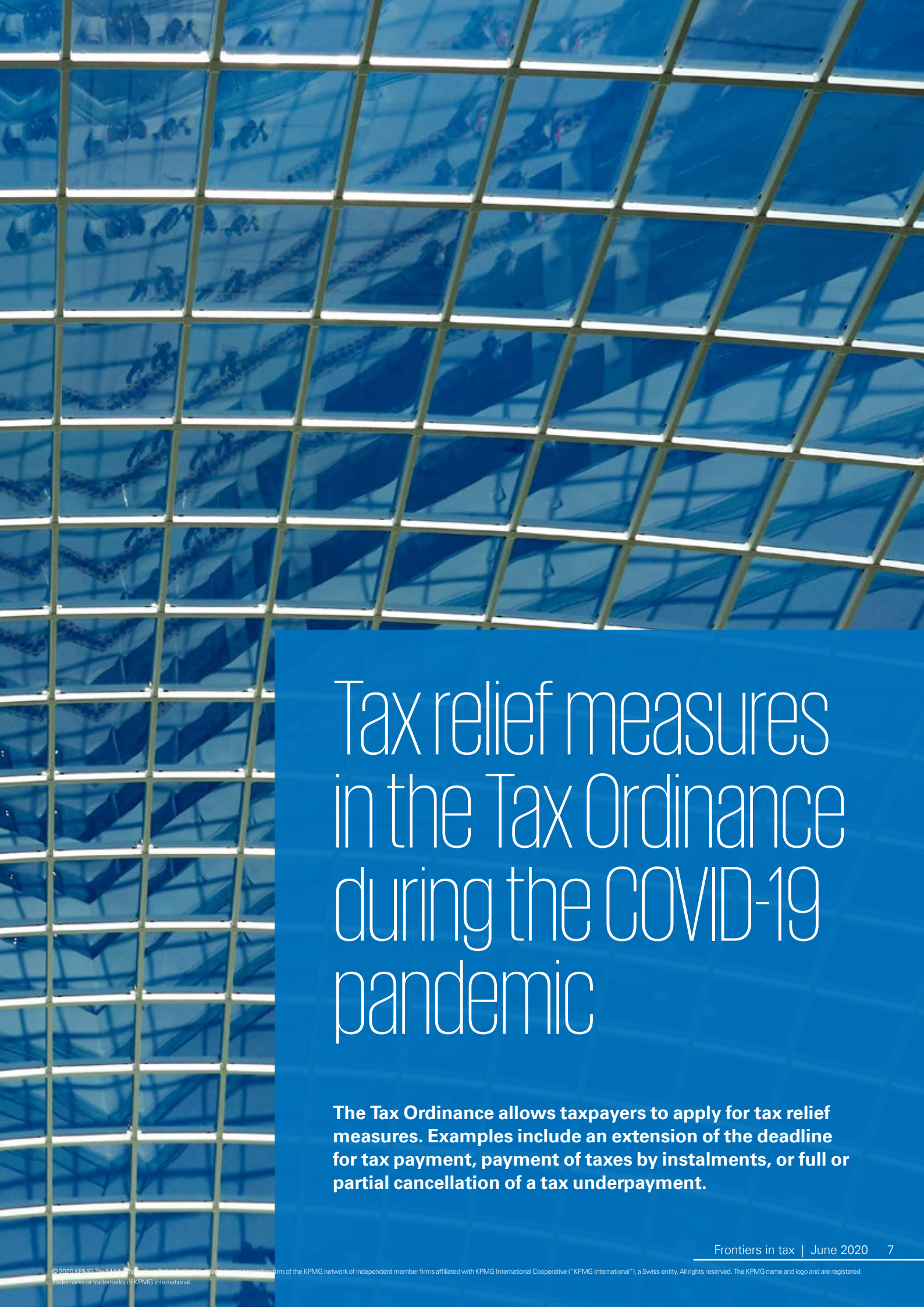
The state of epidemic declared in Poland (under the Regulation of the Minister of Health of 20 March, Dz.U. (Journal of Laws) 2020.491) in response to the SARS-CoV-2 virus, which causes the COVID-19 disease, is a serious challenge for businesses. Many businesses have seen their income decrease sharply and may find it difficult to retain financial liquidity and to settle public liabilities.

Numerous industries and business sectors are affected. Economic forecasts predict that the epidemic will affect the economy in many ways and for a long time to come.

This edition of our publication discusses measures that may help to reduce the impact of the pandemic on the financial situation of businesses. They include measures provided by the so-called Anti-Crisis Shields, such as tax payment relief or financial support to business owners. However, not all the measures introduced by the anti-crisis legislation have been implemented effectively e. g. sometimes illusory suspension of procedural deadlines.

Regardless of the state of the epidemic, work is continuing on regulations that are significant for taxpayers. The main legislative proposals include the new Tax Ordinance and Act on electronic delivery of documents which provides electronic communication between the state and the citizens.





Tax relief measures in the Tax Ordinance during the COVID-19 pandemic

The Tax Ordinance allows taxpayers to apply for tax relief measures. Examples include an extension of the deadline for tax payment, payment of taxes by instalments, or full or partial cancellation of a tax underpayment.

Tax relief measures under the Tax Ordinance

All these measures are available to taxpayers (withholding agents or tax collectors) upon application. A tax relief procedure is a typical example of a procedure initiated only upon application by a taxpayer. This means that even if a tax authority knows that a taxpayer has found themselves in a difficult financial or personal situation, it has no statutory power to initiate such a procedure without the taxpayer's application.

A tax relief measure may only be granted if it is justified by the applicant's valid interest or valid public interest. In the application, the taxpayer must describe their circumstances and provide evidence to substantiate their difficult situation and support the application. Additionally, if tax relief is granted to a enterprises, it will be considered as state aid, in which case specific procedures and relief limits apply.

However, the expressions *taxpayer's valid interest* and *valid public interest* are not defined in the Tax Ordinance. In legal writings, the term *taxpayer's valid interest* is interpreted as an extraordinary or fortuitous event beyond a taxpayer's control which prevents the taxpayer from meeting his tax liabilities. It follows that *taxpayer's valid interest* is a spectrum of economic and/or social circumstances which a taxpayer may use to support an application for a tax relief. As a rule, such circumstances must be extraordinary in nature and beyond the taxpayer's control. It is important to note that the reasons may be different for individuals and different for legal persons. In contrast, interpreting the *public interest* requirement one should consider respecting values shared by society or a local community, such as justice, security, citizens' trust in public authorities or the efficiency of public administration.

Notably, a tax authority will make a decision on any application according to the principle of 'administrative discretion'. This means that the authority is required

to verify whether the taxpayer's valid interest requirement or the public interest requirement is met. However, even if it finds that one or both aforementioned conditions are met, it is not be required to grant the tax relief applied for.

In practical terms, the authority may grant or refuse to grant the relief applied for. Also, the authority has the discretion to grant relief other than that applied for. The taxpayer may appeal against the authority's decision to a higher [second-instance] authority and against that authority's determination to an administrative court.


If the relief applied for is granted, an extension fee must be paid. It is calculated according to the rules that apply to late-payment interest on relief amounts, and the current interest rate is 4%.

It needs to be noted that it is extremely difficult for a taxpayer to obtain any of the tax relief measures described above. This is because tax authorities apply a high level of scrutiny to applications to verify whether the statutory criteria for granting relief are met. A tax authority is most likely to grant the payment-by-instalments relief or a tax deadline extension. In contrast, a taxpayer's tax liability (tax underpayment) will only be cancelled in exceptional cases.

Tax relief grants affected by COVID-19

In response to the COVID-19 pandemic, the Polish government has put many restrictions in place. They have either hindered or prevented the conduct of business, resulting in taxpayers finding it very difficult to meet their tax liabilities.

Under such circumstances, tax relief measures seem the most natural form of supporting the business. They can be applied quickly and easily, with no legislative changes required. What is more, the formal requirements for applications have been relaxed, and the amounts beyond which financial support is classified as state aid have been increased. Also, no extension



“Tax relief measures seem the most natural form of supporting the business.”



fee applies for any tax relief granted in connection with the COVID-19 pandemic.

As a result, the scrutiny given to applications for tax relief measures justified by the taxpayers' difficulty in conducting business due to the COVID-19 pandemic is less strict. This approach is adopted particularly in the case of applications for tax payment extensions or payment by instalments, because these forms of tax relief do not mean that the taxpayer will not pay the tax due at all, but rather that they will pay the tax but at a later date. Applications for such relieves are reviewed only as far as absolutely essential to confirm that the taxpayer's financial standing has deteriorated. In other words, tax authorities assume that the present situation of taxpayers is poor and that the relief applied for may be granted because the *taxpayer's valid interest and valid public interest* requirements are met.

What will follow?

In our view, the relaxation by tax authorities of their rules for reviewing applications for tax relief measures is obviously a right decision. Temporary legislative solutions such as relaxing state aid regulations or waiving tax deadline extension fees should also be appreciated.

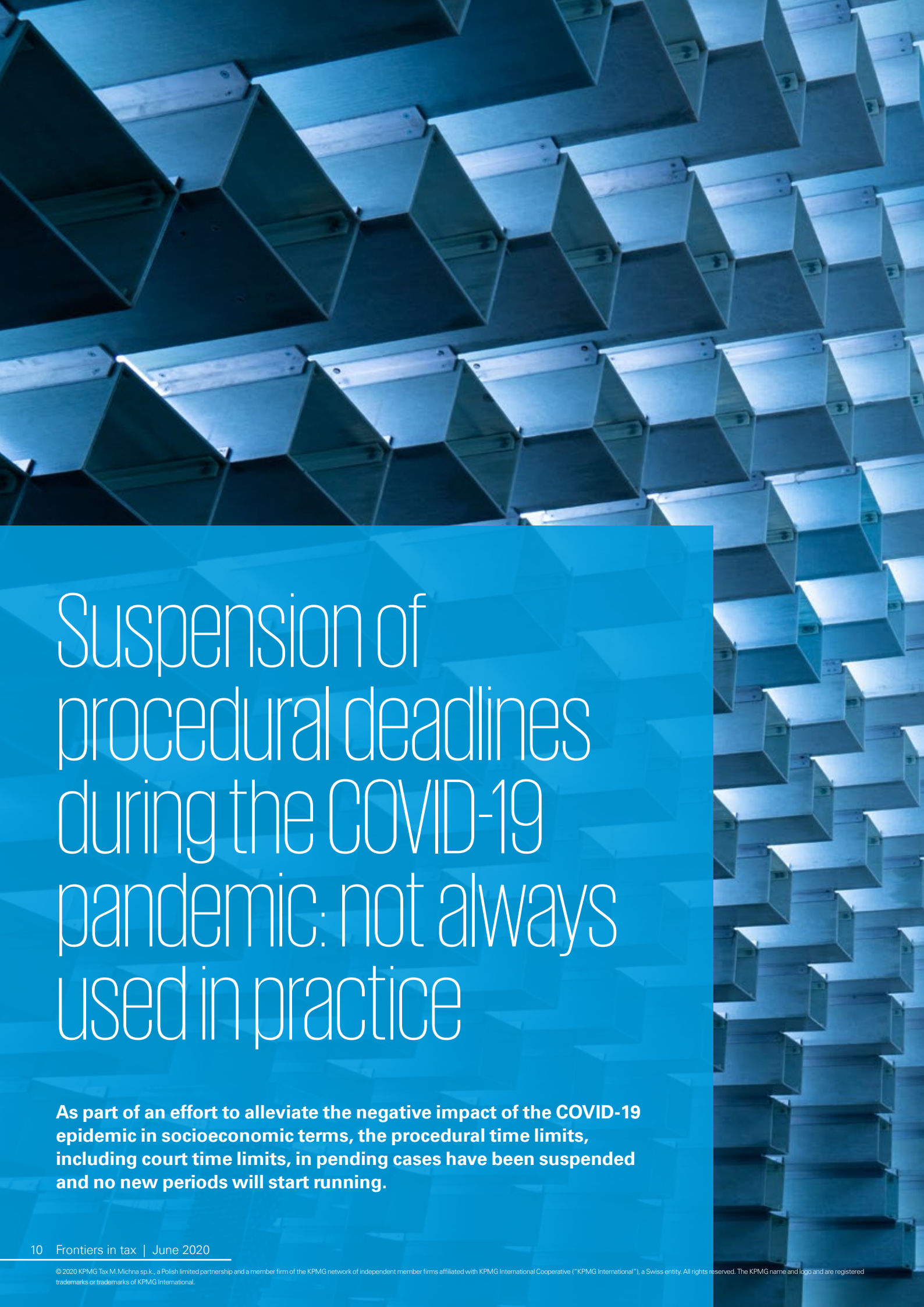
However, as the restrictions on the conduct of business are lifted, tax authorities are likely to gradually resume their standard policy of granting tax relief measures in only exceptional circumstances.



Oskar Wala
Manager in the Tax Litigation Team at KPMG in Poland

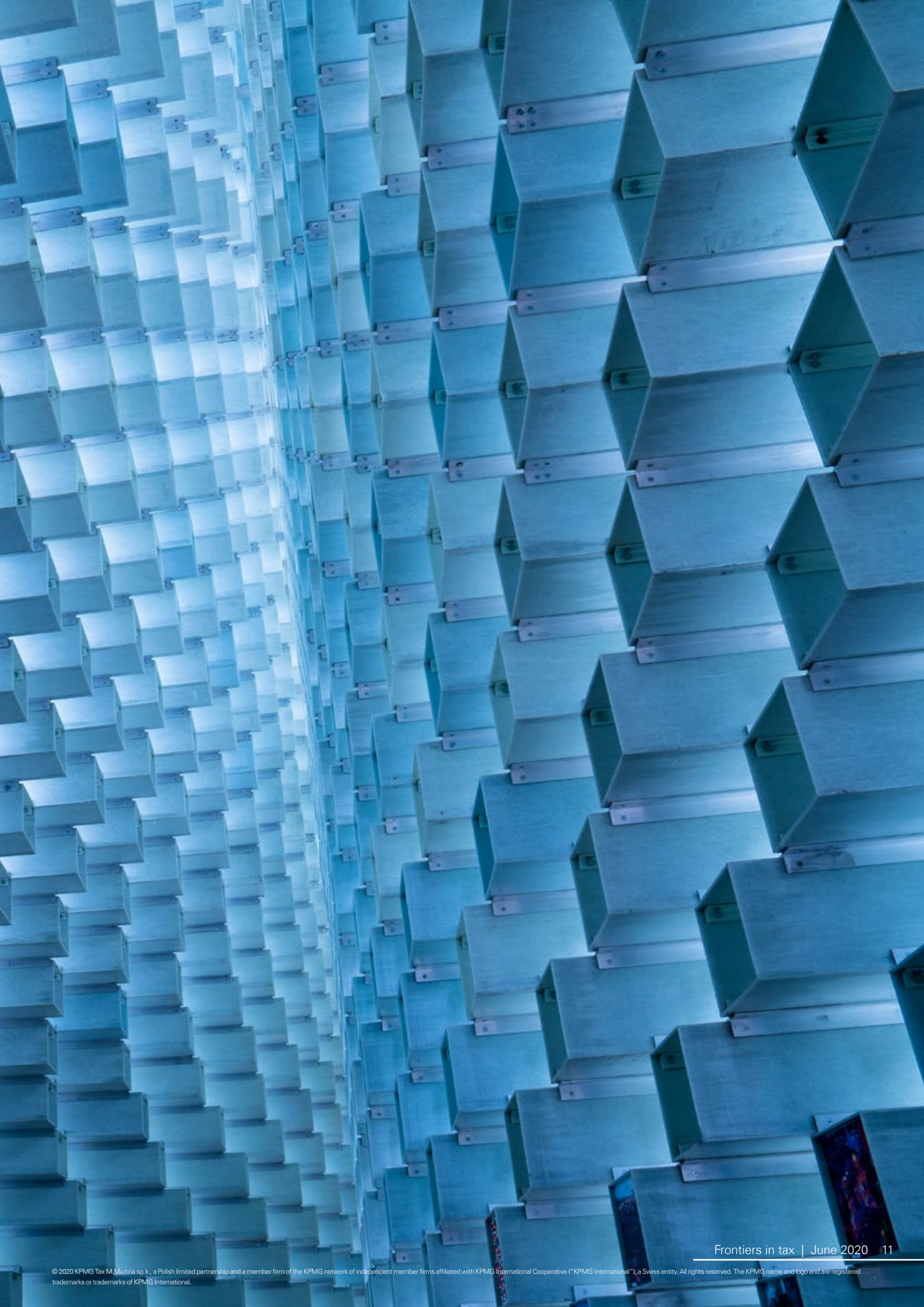


Bartosz Baran
Supervisor in the Tax Litigation Team at KPMG in Poland



Suspension of procedural deadlines during the COVID-19 pandemic: not always used in practice

As part of an effort to alleviate the negative impact of the COVID-19 epidemic in socioeconomic terms, the procedural time limits, including court time limits, in pending cases have been suspended and no new periods will start running.



Based on statutory amendments of 31 March 2020, the procedural time limits, including court time limits, in pending cases have been suspended and no new periods will start running during the state of epidemic emergency and the state of epidemic declared in response to the COVID-19 pandemic. This will apply to certain matters, such as tax inspections, tax and customs inspections, tax investigations and administrative court proceedings. During the state of epidemic, the start of time limits in certain types of proceedings was postponed or, if a time limit had started before the epidemic, it was suspended.

The provisions mentioned above were repealed by the Anti-Crisis Shield 3.0 Act of 16 May 2020. The time limits suspended under the COVID-19 Act were resumed and those the start of which was postponed under that Act were started after seven days from the coming into force of Shield 3.0.

However, not all administrative proceedings were stopped by the Anti-Crisis Shield 3.0 Act. Although procedural time limits were suspended, tax inspections, tax and customs inspections and tax investigations continue, and the

practical implementation of measures provided for in the COVID-19 Act raised many doubts.

Theory ...

Under s.15zzs of the COVID-19 Act, the procedural time limits that had started before that Act came into force were suspended during the epidemic. This applied, in particular, to matters dealt with on a tacit acceptance basis (i.e. if an application is not replied to by an authority, the authority is deemed to have accepted the application), other matters where no reply from the authority dealing with a matter means that the applicant has the right to act, as well as to time limits within which an authority is required to give an opinion or to issue an individual tax interpretation. The suspension of time limits applied, in principle, to time limits within which an authority is required to give an opinion or to issue an individual tax interpretation.

However, the COVID-19 Act specified the types of decisions or determinations permitted during the suspension period. They included, in particular, decisions in matters where an application or a claim is accepted in its entirety as well as matters where an authority is required to give an

opinion or to issue an individual tax interpretation. Additionally, protective measures included the right of an authority to require a taxpayer to act in a certain way within a specified time period. This applied, in particular, to matters where the exercise of that right was justified by public interest, an applicant's valid interest or the valid interest of a person subject to inspection.

... and practice

It is important to note that the fact the procedural time limits in pending cases were suspended or the start of time limits new cases was postponed did not mean that any pending cases were suspended. The relevant regulations made it clear that it was only procedural time limits that were suspended, not the proceedings to which the time limits were related. The provisions of the COVID-19 Act allowed the authorities and the applicants to proceed with pending cases.

The above was reflected in the practices adopted by tax authorities, which included contacting taxpayers directly by means of electronic communications, such as e-mail. In practical terms, tax authority asked taxpayers for additional documentary



evidence or explanations, including in the form of official letters requiring them to do so within a time limit of several days (although such time limits should never have started under the then applicable regulations). In such situations, taxpayers were entitled (but not required) to provide such evidence or explanations.

At the same time, it is essential to note that the suspension of procedural time limits under the COVID-19 Act raises many practical questions. Firstly, it needs to be noted that a public administration authority must enable all the parties to an administrative procedure to respond to the evidence and other materials in their matter and to any requests made by the authority. This was not possible during the suspension of procedural time limits, which may indicate that any decision issued during the suspension period might be challenged for formal reasons in the future. It is also important to note that suspended time limits included periods of several years. It follows that it will be necessary to add an appropriate number of days to the time period in the future.

Doubts over the dates of suspension and resumption of proceedings

Doubts have emerged over the start date of the suspension period.

The state of epidemic emergency was declared in Poland on 14 March 2020 and has continued ever since. The provisions that suspended procedural time limits did not come into force until 31 March 2020. As no temporary provisions were passed that would have given a retrospective effect to the provision of s.15zzs(1)(1) of the COVID-19 Act, that provision applies only to time limits that had already started when the provision came into force (suspension of time limits) and time limits that had not started before the coming into force of the provision (the start of such time limits was postponed). It is perhaps worth taking a cautious approach by considering the 31 March 2020 as the first day of the suspension period, although there are arguments to support the claim that the suspension period started on 14

”

As part of an effort to alleviate the negative impact of the COVID-19 epidemic in socioeconomic terms, the procedural time limits, including court time limits, in pending cases have been suspended and no new periods will start running.

”

March, i.e. on the first day of the state of epidemic emergency declared in Poland, during which procedural time limits were either suspended (if they had already started) or did not start under the COVID-19 Act.

It needs to be noted, however, that many time limits will start anew. The time limits suspended under the COVID-19 Act were resumed, and those that had not started under that Act were started seven days after Shield 3.0 came into force. However, the full time limit plus seven days will be granted to a taxpayer if the time limit in his matter has not started at all because it was immediately suspended. It follows that if a taxpayer had, for example, two days within which to file an appeal before the suspension, then the time limit under the provisions of Shield 3.0 will be seven days plus two days.

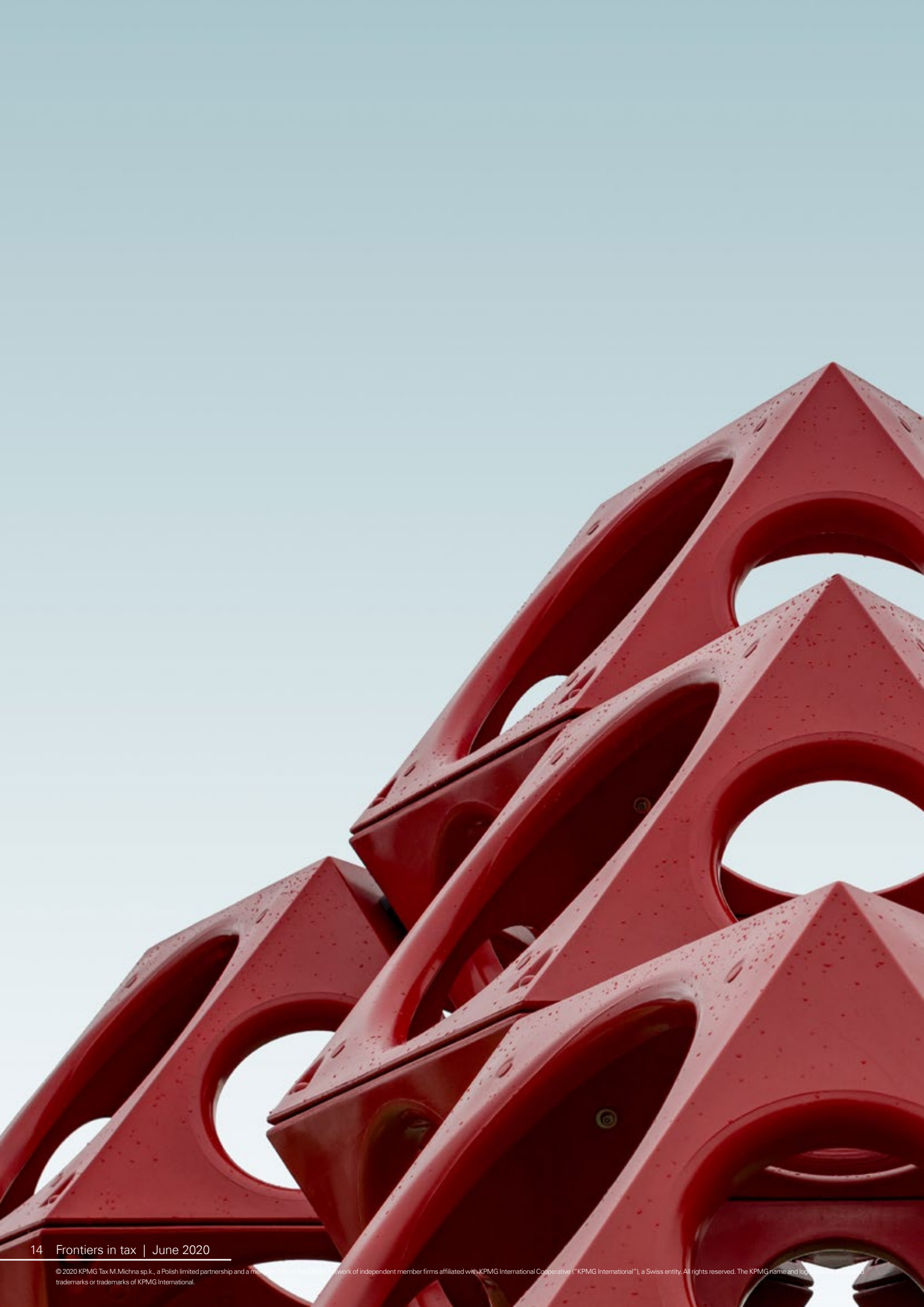
As the Anti-Crisis Shield 3.0 Act came into force on 16 May 2020, procedural time limits were resumed or started on Sunday, 23 May 2020. Some legal writers disagree and argue that the correct date is either 22 May or 24 May. However, we do not think that there is any basis for such dates in the provisions of the Shield 3.0 Act.



Kamil Pierścioneck
Manager in the Tax Litigation Team
at KPMG in Poland



Ilona Augustyniak
Senior Consultant in the Tax Litigation
Team at KPMG in Poland





Procedural aspects of anti-crisis support for businesses

Under the present economic circumstances, what is particularly important for many business owners is quick access to capital they can use to stay afloat and make payments as they become due, including of wages. Government support measures such as financial support for businesses as part of the Anti-Crisis Shield and the Financial Shield are designed to prevent the negative impact of the COVID-19 pandemic in socioeconomic terms. It needs to be noted, however, that business owners will only be granted such support if they meet various eligibility criteria. Moreover, the purposes for which the money can be used are limited, and tax authorities may want to investigate the process of obtaining the support and the subsequent cancellation of the debt to be repaid.

Forms of financial support

Businesses financially affected by the COVID-19 pandemic have access to a number of measures developed by the government and the banking sector. This analysis focuses on the procedural aspects of financial support available from the Polish Development Fund (Polish: PFR) or the Guaranteed Employment Benefit Fund (Polish: FGŚP).

As part of the Financial Shield of 15 June 2020, the Polish Development Fund launched a support programme for micro enterprises, SMEs and large enterprises that have been affected by the Covid-19 pandemic. The main criteria for eligibility for support from the Polish Development Fund and details of the purposes for which the support may be used, as well as the criteria for cancellation of the related debt, are specified in the Rules for Access to Support from the Government Programme called the “Polish Development Fund's Financial Shield for Micro Enterprises and SMEs”¹ and “Polish Development Fund's Financial Shield for Large Enterprises”². To be granted financing from the Polish Development Fund, a business owner must submit an application and sign an agreement for the grant of a financing.

As regards support from the Guaranteed Employment Benefit Fund, to be eligible for such support, an enterprise owner must meet the requirements set out in the Act of 31 March 2020 to amend the Act on special measures to prevent, counteract and combat COVID-19, other infectious diseases and related crisis situations, and some other statutes. Applications must be made to the director of the provincial job centre for the registered office of the applicant. As in the case of payments from the Polish Development Fund, support from the Guaranteed Employment Benefit Fund is deemed granted when it is paid directly into the applicant's bank account.

Better safe than sorry

According to §11.13 of the Polish Development Fund's Rules for SMEs, if an applicant makes a false statement or provides false information in their application, the Polish Development Fund may require the applicant to repay all or any part of the received financing. If this is the case, the business owner will be required to repay all or part of the financing immediately, but not later than within 14 business days since the financing reception, into a specified bank account held with the bank that paid out the financing. However, pursuant to §4.7 of the Polish Development Fund's Rules for Large Enterprises, PFR is entitled to refuse to pay or request reimbursement of financing if there is a reasonable suspicion of any type of fraud, in particular based on information obtained from competent authorities.

Additionally, the obtaining of financial support from the Polish Development Fund or the Guaranteed Employment Benefit Fund when the applicant is found not to have met the eligibility criteria may constitute the crime of extortion of public funds, which is

a criminal offence under art. 297 of the Polish Penal Code, carrying a penalty of imprisonment for three months to five years. Additionally, a business owner applying for financial support from the Guaranteed Employment Benefit Fund may be criminally liable for making a false statement in the application (art. 233 of the Polish Penal Code).

It is, therefore, advisable for any applicant to ensure that they meet the eligibility criteria for the support before applying, in terms of the negative impact of the pandemic on their business. This is particularly important if the business owner has any doubts over their eligibility for the support.

Appeal procedures

If a financing paid by the Polish Development Fund to an applicant is lower than the amount applied for, the decision may be appealed against using an electronic form and the same bank through which the original application was filed. The appeal will only be accepted if the applicant provides documentary evidence showing differences between the reasons for the decision to refuse the payment

¹ The rules can be downloaded from the Polish Development Fund's website at https://pfrsa.pl/dam/serwis-korporacyjny-pfr/documents/tarcza-finansowa-pfr/regulamin_programu_tarcza_finansowa_pfr_dla_mmsp.pdf.

² https://pfrsa.pl/dam/serwis-korporacyjny-pfr/documents/tarcza-finansowa-pfr-250/Regulamin_programu_Tarcza_Finansowa.pdf, dalej: „Regulamin dla dużych firm”.

applied for and the applicant's actual situation, or proves a mistake or error that resulted in the payment of an amount lower than that applied for. Two such appeals are allowed, except that the second appeal may be filed only if the business owner was not paid the missing part of the amount applied for after the first appeal. The time limit for filing an appeal is two months from the receipt of the first decision to grant the financing.

However, no appeals are accepted from a business owner whose application has been rejected. He may then re-apply at any time when the Polish Development Fund's programme is available, after contacting the Polish Social Insurance Institution (ZUS), respective tax office and bank for details of the rejection of the first application. Neither the Act of 31 March 2020 on a System of Development Institutions nor the Regulation of the Minister of Development Funds and Regional Policy of 28 April 2020 concerning the Financial Shield, contain specific provisions for appeals against the Polish Development Fund's decisions to refuse to grant financial support. Similarly, there are specific provisions for appeals against the Polish Development Fund's decision not to cancel the beneficiary's debt resulting from the grant of support.

In response, the Ombudsman for SMEs has applied to the Ministry of Development for explanatory notes on the criteria for eligibility for support as part of the Financial Shield. According to the Ombudsman³, the Polish Development Fund is an institution with public administration duties and, as such, its determinations are official decisions and appeals against them should be available. Determinations of such appeals should be appealable to a provincial administrative court. At the time of writing this analysis, as indicated on the Ombudsman's website⁴, the Ombudsman's application has not been considered.

It needs to be highlighted that §14 of the Polish Development Fund's Rules for SMEs (in force since May 28, 2020), introduces explanatory proceedings, pursuant to which entrepreneurs applying for a financing are entitled to turn to PFR with a question regarding the refusal to receive a financing and regarding the entrepreneur's error, which resulted in financing grossly lower than the maximum amount that the entrepreneur could have applied for.

The explanatory procedure is a form of quasi-appeal procedure, however, the provisions regarding the necessity to submit a new application for financing in the event of a negative decision have not changed. In view of the above, the explanatory proceedings in practice only allow the entrepreneur to become familiar with the reason for issuing a refusal decision, but not to change the decision itself.

At the same time, as follows from the explanations contained in §4 of the Polish Development Fund's Rules for Large Enterprises (effective from June 9, 2020), due to the extraordinary nature of the PFR programme and to ensure the efficiency and quickness of recognition of applications for financing, the procedure for examining these applications does not provide for the possibility of appeal against PFR decisions to grant or refuse financing.

As regards financial support from the Guaranteed Employment Benefit Fund to help employers pay wages, the Guaranteed Employment Benefit Fund is a special-purpose fund within the meaning of the Public Finance Act of 27 August 2009 and is not a body corporate. Therefore, the provisions of the Code of Administrative Procedure apply to the Fund except for the provisions on administrative decisions. This means that the grant of financial support by the Polish Development Fund is not an administrative decision and if an application for support

from the Guaranteed Employment Benefit Fund is rejected or if the beneficiary is required to repay all or part of the support (plus interest), no appeal should be available (this is confirmed by information posted on the website of the Ministry of Family, Labour and Social Policy: <https://www.gov.pl/web/rodzina/dofinansowanie-do-wynagrodzen-z-funduszu-gwarantowanych-swiadczen-pracowniczych-dla-kogo>). It seems that because of the special nature of the financial support provided by the Guaranteed Employment Benefit Fund, which is one of the measures in place to counteract the socioeconomic impact of the COVID-19 epidemic, the Ombudsman's suggestions regarding applications for support from the Polish Development Fund should also apply to applications for support from the Guaranteed Employment Benefit Fund.

In view of the above, while the measures provided as part of the Anti-Crisis Shield and the Financial Shield are of benefit to business owners, it is our opinion that the procedural aspects of the anti-crisis support for businesses should be made more precise.



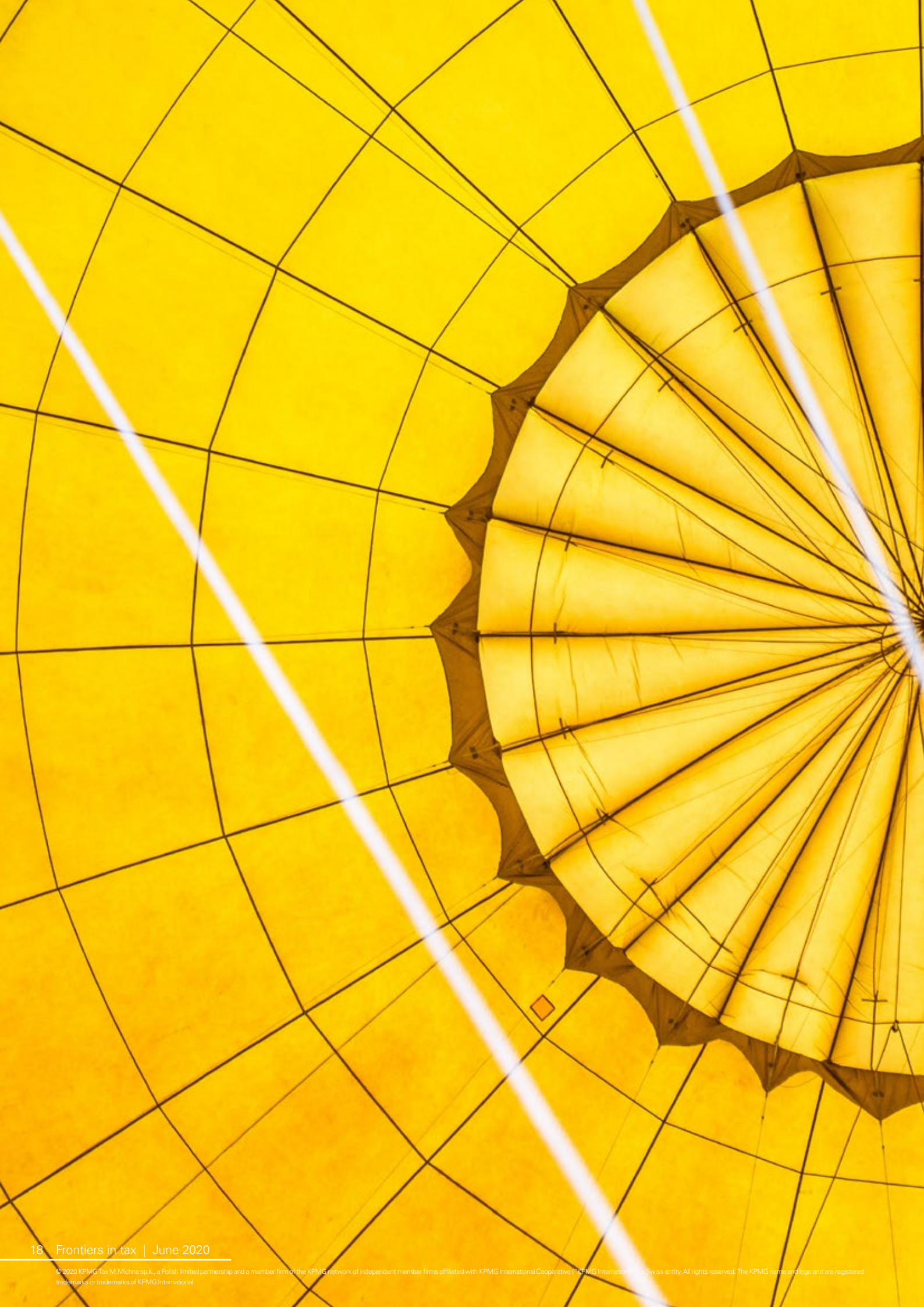
Marcin Górniak
Senior Manager in the Tax Litigation Team at KPMG in Poland



Ilona Augustyniak
Senior Consultant in the Tax Litigation Team at KPMG in Poland

³ <https://rzecznikmsp.gov.pl/rzecznik-msp-wnioskuje-do-wiceprezes-rady-ministrow-minister-rozwoju-o-wydanie-objasnen-prawnych-w-przedmiocie-warunkow-skorzystania-z-tzw-tarczy-finansowej-przez-mikroprzedsiębiorcow-2/>

⁴ <https://rzecznikmsp.gov.pl/>





Digital communication with public administration authorities

The anti-crisis statutes (referred to as shields) passed in response to the COVID-19 pandemic contain provisions for new measures related to postal services. The changes were expected to help deal with the postal delivery issues occurring in connection with the pandemic, but they are part of the process of digitalising postal services and the work on the introduction of electronic delivery of documents in communication between the state and the citizens.

Hybrid mail

Under the anti-crisis statutes, the Polish national postal operator will, until 30 September 2020, use what is known as hybrid mail to deliver letters using electronic means.

More specifically, according to the new regulations, the operator will receive a registered letter and then handle and deliver it as an electronic document to its recipient without the recipient having to sign for the receipt of the document. In practical terms, the idea of the hybrid mail service is to make a digital version of a hard copy letter and to deliver the digital document to its recipient by electronic mail. The document delivered electronically will have the legal effect of its hard copy counterpart.

The electronic document will be deemed delivered on the day when the recipient becomes familiar with the document made available in the inbox. If the recipient does not become familiar with the document, the document will be deemed delivered 14 days after it is made available, as is the case with traditional registered letters.

The recipient must give consent

The hybrid mail delivery service will not be available to everyone. To use

the service, you must be registered to use the "trusted profile" identity authentication service and have given consent to the receipt of letters using the hybrid mail service.

It is good to note that the hybrid mail service provisions are not sufficiently precise. For example, it is not clear how the postal operator, when receiving a letter from a sender, will find out that the recipient is registered to use the "trusted profile" service, or how the operator will contact the recipient to obtain their consent. Doubts have also emerged over the fact that the hybrid mail service regulations do not provide for the sender's consent, although the sender may have a 'legal interest' in that the letter is not opened on its way to the recipient and that no third party has access to the content of the letter.

However, the hybrid mail delivery service will not be used for all deliveries. For example, it will not be available in the case of letters posted to or by courts, public prosecutors and other law enforcement agencies, as well as by court bailiffs. Letters to and from tax authorities are not excluded. This means that taxpayers may give consent to the use of the hybrid mail service in correspondence with tax authorities or other public administration authorities not excluded from the service.

Is it worth using the hybrid mail service?

The Polish Ministry of Digital Affairs says that the delivery of letters using the hybrid mail service will be protected by the "postal secrecy" principle, covering the posting, scanning and delivery of any letter.

However, the hybrid mail service regulations are causing much uncertainty. It is not clear who and when should open registered letters and make digital copies of them. It follows that the recipient's consent to the use of the hybrid mail service may have far-reaching consequences, such as the infringement of the constitutional principle of secrecy of correspondence or the right of privacy.

It is also not clear how the recipient's 'legal interest' will be protected if the digital copy delivered to them is defective. After all, the scanned copy of a letter may be illegible and/or incomplete. Also, it is important to note that email accounts may have incoming email file size limits, which may prevent the receipt of large files. This risk will fall on the recipient, who will not be able to receive a digital letter, although he has given consent to the use of the hybrid mail service. The doubts raised above are particularly significant if the recipient is a taxpayer and the digital letter is a letter from a tax authority with tax assessment.

More changes to come

Work has been continuing for years on a Act on electronic delivery of documents introducing electronic deliveries of correspondence. The Act contains provisions for the exchange of correspondence between public entities and other public entities, private entities and individuals.

According to the Act on electronic delivery of documents, the hybrid mail service would involve converting an electronic document sent by a public entity into a hard copy letter to be delivered to recipient. In practical terms, an electronic document would be printed and delivered to recipient. The process would be automated

Under the anti-crisis statutes, the Polish national postal operator will, until 30 September 2020, use what is known as hybrid mail to deliver letters using electronic means.



to ensure that the "postal secrecy" principle is respected throughout the service supply process. This would be the opposite of the postal delivery process implemented in response to the Covid-19 pandemic. If recipient prefer receiving letters in the traditional way, a letter from authority will be printed at the post office to which it was delivered, placed in an envelope and delivered to recipient. However, this option will not be available to professionals (such as tax advisers or lawyers) representing taxpayers in dealing with tax authorities, as they will be required to receive electronic documents electronically.

According to the proposal, the Act on electronic delivery of documents should become law on 1 October 2020, except for some of its provisions, i.e.

those regarding administrative court proceedings, which are expected to become effective on 1 January 2029.

As the digital services sector is growing fast, the replacement of hard copy documents with their electronic versions, also in communication between the state and the citizens, was only a matter of time. Electronic deliveries are certainly a step in the right direction that will make communications between the state and the citizens (including communications between taxpayers and tax authorities) easier and faster. At the same time, there are justified concerns over the protection of the secrecy of correspondence, the protection of privacy and the protection of professional secrecy in the case of the electronic delivery of documents.

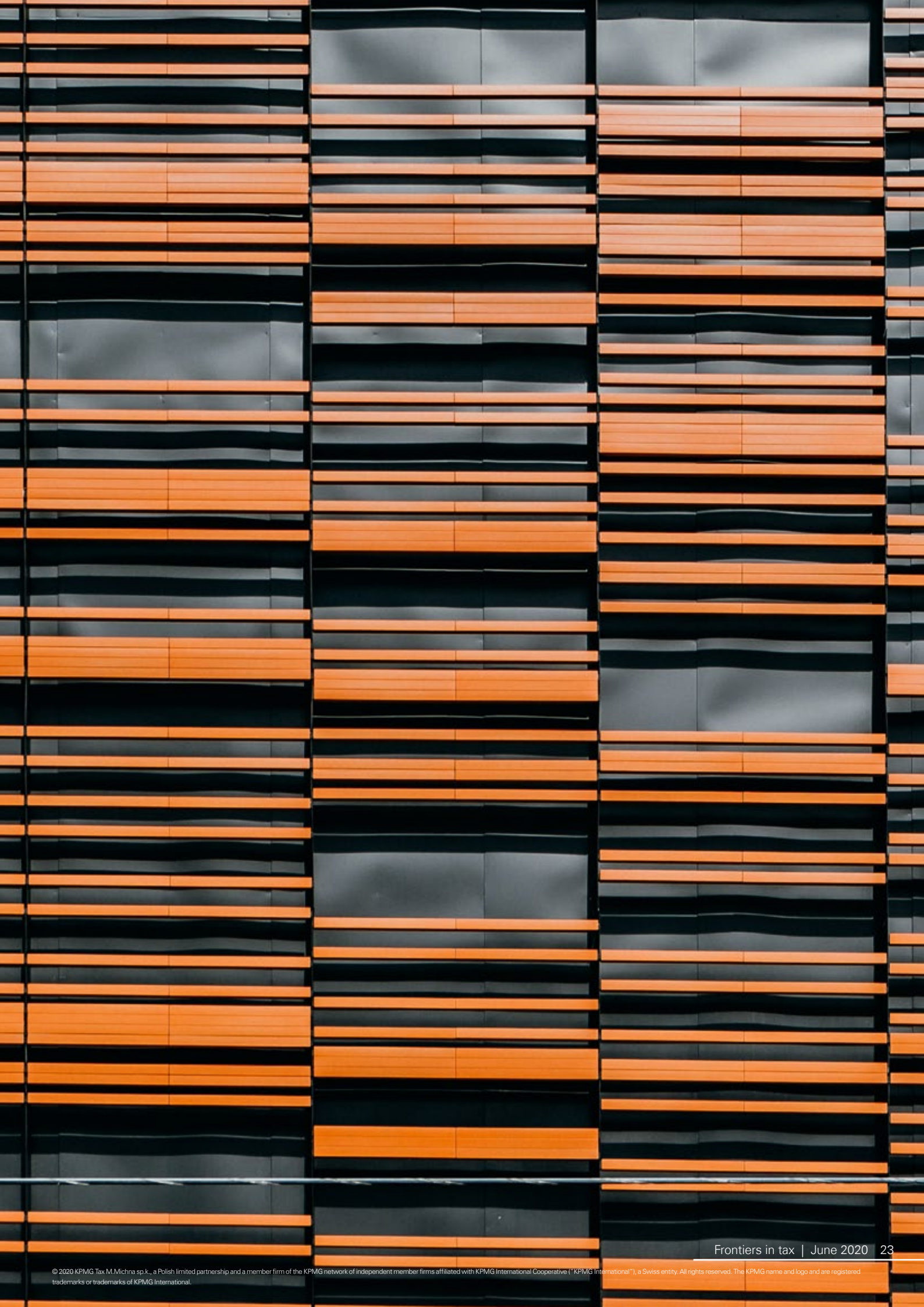


Dominika Gaca-Jurkiewicz
Supervisor in the Tax Litigation
Team at KPMG in Poland



The new Tax Ordinance

In June 2019, during the previous term of the Polish Parliament, the lower house, the Sejm, received a bill of totally new Tax Ordinance, proposed by the government. The first reading was given to the bill, but the proposal was not passed before the end of the previous term of Parliament. According to the Polish parliamentary principle, a bill not passed during the term of Parliaments in which it was proposed is not transferred for parliamentary work in the following term. However, the Ministry of Finance said in March 2020 that the government was continuing to work on a new Tax Ordinance and that the previous proposal was the basis for further legislative work. Read on for the main principles and objectives of the previous proposal.



A dedicated Codification Committee for General Tax Law took five years to prepare the proposal of the new Tax Ordinance. The document contained nearly eight hundred articles and was expected to become law on 1 January 2021. It aimed at superseding the Tax Ordinance of 1998, which has been amended on numerous occasions.

The new Tax Ordinance was officially justified by the need for measures to ensure a balance between public interests and the interests of taxpayers. The bill proposed to ensure increased protection of taxpayers in dealing with tax authorities. It proposed changes regarding two main areas, i.e. protection of the rights of taxpayers and improvement of the efficiency of tax collection.

New general principles

The new Tax Ordinance proposed to introduce new general tax principles: the principle of providing information and offering support, the principle of impartiality and equal treatment, the principle of presumption of taxpayer honesty, and the principle of reasonable expectations.

The principle of providing information and offering support would require tax authorities to provide taxpayers with information and support to help them comply with tax regulations voluntarily and exercise their rights under such regulations. The principle was expected to apply not only in formal tax proceedings and in connection with the subject matter of such proceedings, but also to all kinds of tax provisions, including provisions of material tax law.

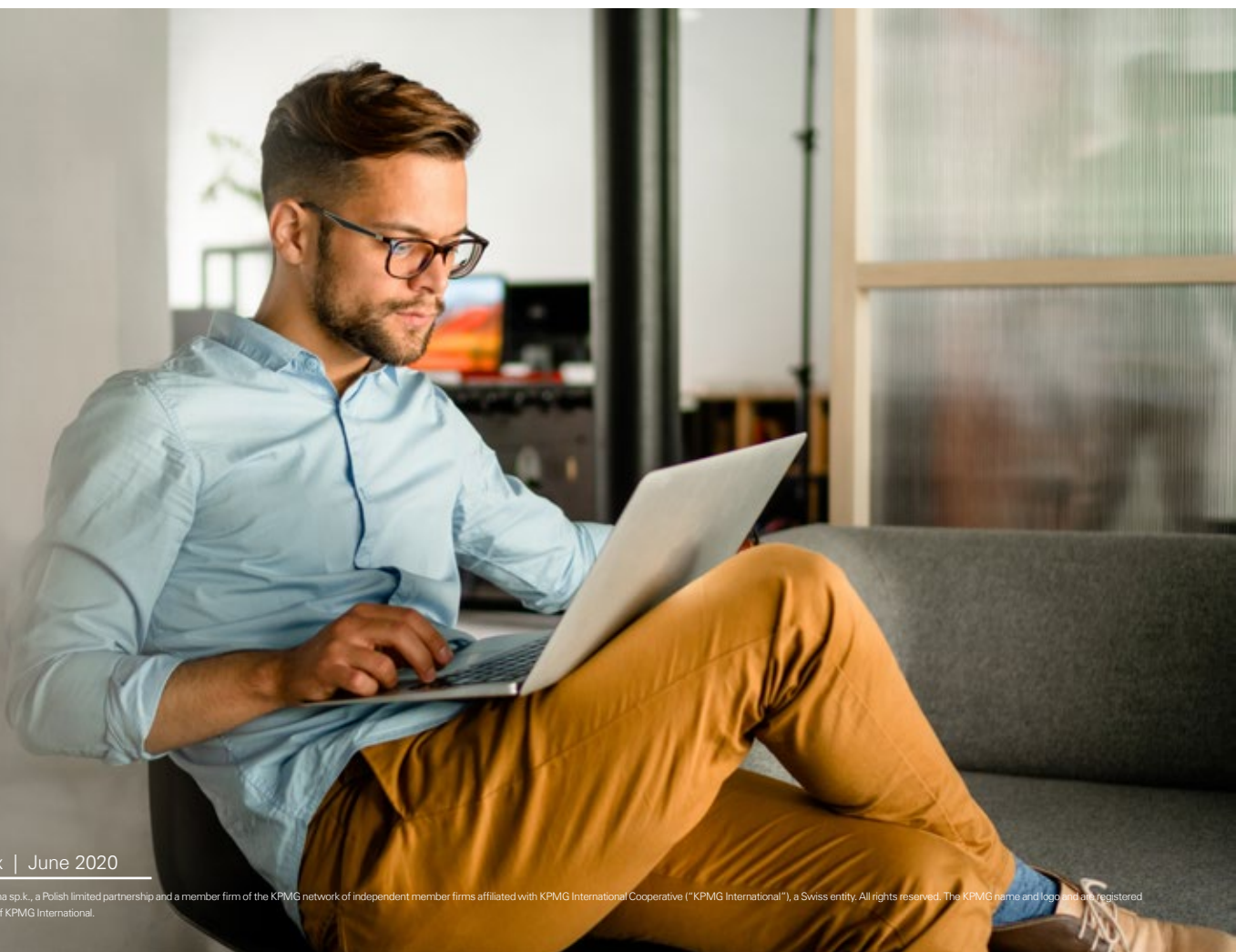
The principle of impartiality and equal treatment was proposed as an addition to the existing principle of trust, to ensure that equal treatment is applied to all taxable persons with the same factual and legal circumstances in the same matter, and to all taxable persons in respect of separate matters with similar factual and legal circumstances.

The principle of presumption of taxpayer honesty assumed that taxpayers are ready to cooperate and, as long as they understand the provisions of tax law and consider tax procedures to be fair, to act in a lawful manner.

Last but not least, the principle of reasonable expectations would require tax authorities to make consistent decisions on matters with the same factual and legal circumstances unless a valid reason exists to depart from the consistency policy. This was expected to make the decisions of the authorities more predictable.

Consensual forms of resolution of tax disputes

The new Tax Law Bill also proposed several measures to help resolve tax disputes consensually or to prevent such disputes altogether. Examples include tax agreements with mutual concessions where the tax authority and the taxpayer reach an agreement on a tax issue to the extent permitted by law; mediation procedures to facilitate communication between tax authorities and taxpayers; or consultations for, in particular, taxpayers that have completed complicated business transactions (e.g. legal form conversions) and are not certain if they have not made any errors that might result in adverse tax implications.



The main difference between the proposed consultation measure and what is already available and known as 'individual interpretation' is that the former would have been used by the tax authority to examine the records relating to a transaction and to determine, by way of a formal decision, whether or not the related tax settlements were accurate.

Improving the efficiency of tax collection

The new Tax Law Bill proposed also to improve the efficiency of tax

providing for precise criteria for immediate enforcement of decisions, streamlining the procedures for the imposition and reduction of penalties, and modifying the rules of issuing tax interpretations.

What will happen to the new Tax Ordinance?

The Ministry of Finance said in a statement a few months ago that a detailed review of the previous proposal would be necessary before it was presented to Parliament again. The purpose of the review would be to

”

The new Tax Ordinance proposed to introduce new general tax principles: the principle of providing information and offering support, the principle of impartiality and equal treatment, the principle of presumption of taxpayer honesty, and the principle of reasonable expectations.

”

collection, by improving the quality of the existing tax evasion provisions, introducing new rules for the expiry of tax assessments and for tax collection, permitting tax authorities to issue determinations of overpaid tax in partial decisions or after the expiry of a tax liability, introducing more efficient tax procedures (a simplified procedure, a representative procedure), streamlining the existing extraordinary procedures for repealing or amending final administrative decisions,

verify the relevance of the bill proposal in the light of the recent amendments to existing regulations and in terms of *vacatio legis* requirements. The Ministry of Finance states that some regulations need to be streamlined and made easier for taxpayers to comply with. A review of the proposal will be the basis for a new plan of legislative work. It is unknown when the new Tax Ordinance will be re-presented to Parliament or what new provisions will be proposed.



Łukasz Kupiec
Assistant Manager in the Tax
Litigation Team at KPMG in Poland



Dominika Meller
Consultant in the Tax Litigation
Team at KPMG in Poland

KPMG's publications

**The KPMG analyses and reports are an output of our expertise and experience.
The publications take up issues important to enterprises operating in Poland and globally.**



The Polish tax system as seen by delegates to KPMG's 10th Tax and Accounting Congress

This report contains the results of a survey regarding Poland's tax system. The survey was carried out on 16 January 2020 among delegates to KPMG's 10th Tax and Accounting Congress, i.e. senior managers, CFOs, chief accountants and managers in charge of financial reporting and controlling departments. The aim of the survey was to assess Poland's tax system from the perspective of senior managers across sectors and industries throughout Poland.



Family Business Barometer Towards multi-generational businesses Edition 2019

This report is the eighth edition of the KPMG survey covering certain European countries, and Polish family businesses have joined the survey for the seventh time already. The report is based on the results of computer-assisted web interviews (CAWIs) carried out in late May and early June 2019. The survey included 1,613 respondents in 27 countries, including Poland. They assessed the situation of their businesses, their plans for the future and the challenges they faced.



Customer experience (CX) as the main objective of business transformation

This report is based on the results of a survey carried out in the second quarter of 2019 by an independent research company. The survey used computer-assisted web interviews (CAWIs) and a sample of more than 5,000 Polish consumers representative of people aged over 16 years and living in Poland. The methodology of the survey, KPMG Nunwood, was identical to that employed in surveys in 20 other countries. The different brands, industries and countries are compared by reference to the CEE (Customer Experience Excellence) index. This indicator is based on the assessment of the Six Pillars™ of Customer Experience, taking into account their individual impact on building customer experience in a given country. The KPMG report also includes a list of the Top 100 Brands recognised by Polish consumers as providing them with the best customer experience.



The automotive industry Edition Q1/2020

This report is one in a series of quarterly reports that look at the current trends in Poland's automotive industry, defined to comprise the automotive market, industrial manufacturing and automotive financial services. This analysis is based on the latest available vehicle registration figures, other statistics and market data. The report is the result of joint work undertaken by the Polish Association of the Automotive Industry and KPMG in Poland.



The Barometer of Automotive Managers' Sentiment

The Barometer of Automotive Managers' Sentiment is a survey carried out by the Polish Association of the Automotive Industry and KPMG Poland in December 2019. In it, automotive managers were asked what they thought of the present situation of Poland's automotive industry and its future. The respondents included managers working for manufacturers and distributors of vehicles, trailers, semi-trailers, purpose-built vehicle bodies, components, parts and accessories.

We encourage you to read KPMG publications on [business security during the COVID-19 pandemic](#) and see how KPMG experts can support your business in this difficult time. **Do you have any question?** Send an e-mail to: mampanyanie@kpmg.pl.
An expert in the field will immediately answer your inquiry.

Contact



Dariusz Malinowski

**Partner,
Head of the Tax Litigation Team
at KPMG in Poland**
E: dmalinowski@kpmg.pl



Mariusz Jurkiewicz

**Senior Manager
in the Tax Litigation Team
at KPMG in Poland**
E: mjurkiewicz@kpmg.pl



Marcin Górniak

**Senior Manager
in the Tax Litigation Team
at KPMG in Poland**
E: mgorniak@kpmg.pl

Interested in Taxes?

VISIT:



home.kpmg/pl/blogpodatkowy
home.kpmg/pl/podatki
home.kpmg/pl/taxalerts
home.kpmg/pl/frontiersintax
home.kpmg/pl/ppt
abcplatnika.pl
taxownik.pl
kpmgspot.pl

Find us:

facebook.com/kpmgpoland

twitter.com/kpmgpoland

linkedin.com/company/kpmg_poland

youtube.com/kpmgpoland

instagram.com/kpmgpoland

pinterest.com/kpmgpoland



KPMG Poland

KPMG offices in Poland

Warszawa

ul. Inflancka 4A
00-189 Warszawa
T: +48 22 528 11 00
F: +48 22 528 10 09
E: kpmg@kpmg.pl

Kraków

ul. Opolska 114
31-323 Kraków
T: +48 12 424 94 00
F: +48 12 424 94 01
E: krakow@kpmg.pl

Poznań

ul. Roosevelta 22
60-829 Poznań
T: +48 61 845 46 00
F: +48 61 845 46 01
E: poznan@kpmg.pl

Wrocław

ul. Szczytnicka 11
50-382 Wrocław
T: +48 71 370 49 00
F: +48 71 370 49 01
E: wroclaw@kpmg.pl

Gdańsk

al. Zwycięstwa 13A
80-219 Gdańsk
T: +48 58 772 95 00
F: +48 58 772 95 01
E: gdansk@kpmg.pl

Katowice

ul. Francuska 36
40-028 Katowice
T: +48 32 778 88 00
F: +48 32 778 88 10
E: katowice@kpmg.pl

Łódź

ul. Składowa 35
90-127 Łódź
T: +48 42 232 77 00
F: +48 42 232 77 01
E: lodz@kpmg.pl

© 2020 KPMG Tax M.Michna sp.k., a Polish limited partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. The KPMG name and logo and are registered trademarks or trademarks of KPMG International.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

kpmg.pl