September 2026

Ministry of Finance announces a deferral of penalties

for errors in KSeF until the end of 2027

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The Ministry of Finance has commenced work on a draft bill that extends the period during which taxable persons are not fined for errors related to the use of the Domestic e-Invoice System (KSeF). The requirement to use the system and the liability for inaccurate tax reporting remain unchanged.

Announcement of penalty deferral period extension

On 16 September 2026 the Ministry of Finance announced its intention to extend the period during which taxable persons will not be fined for errors related to the use of the Domestic e-Invoice System (KSeF) until 31 December 2027. The ministry noted that the decision is a response to requests from traders, industry organizations and tax experts, and that the immediate reason is 31 December 2026 expiration of the transition periods provided for some taxable persons. The additional year is to allow small businesses to learn how to operate the system and adapt their business processes without the risk of financial liability. The announcement covers administrative fines arising out of Article 106ni of the VAT Act. It does not exclude liability for other violations of tax law or for acts consisting of dishonest or fictitious invoicing.

Requirement to use KSeF as of 1 January 2027

As of 1 January 2027 the requirement to issue structured invoices will cover taxable persons who have so far benefited from temporary deferrals, subject to the statutory exceptions from the requirement to invoice through the system. The Ministry of Finance stressed that the deferral of fines does not mean there is no obligation to use KSeF. The distinction between these two issues affects the taxable person's legal situation: issuing an invoice outside the system, except in cases specified by law, constitutes a violation of the VAT Act, irrespective of whether a penalty is imposed by the tax authority during the period. Thus

the announced change pertains only to the punitive aspect and leaves unchanged the scope of substantive obligations relating to invoicing.

Determination of the reasons for the imposition of fines

Article 106ni(1) of the VAT Act lists three violations. The first is the failure to issue, contrary to the obligation, a structured invoice using the Domestic e-Invoice System. The second is issuing an invoice that does not comply with the provided template during a system outage referred to in Article 106ne par. 1 or 3, during a period of system unavailability specified in Article 106ne par. 4 or in the case specified in Article 106nda par. The third is the failure to submit an invoice referred to in Article 106nda par. 1, Article 106nf par. 1 or Article 106nh par. 1 by the required deadline. This list includes only the specified violations and does not correspond to the broader, general term "errors in the use of KSeF."

Determination of the fine amount and payment date

Despite plans for a deferral, it is good to understand how KSeF fines work. The fine is imposed by the head of the tax office by way of a decision. It amounts to up to 100% of the tax amount shown on an invoice issued outside KSeF, and in the case of an invoice without a tax amount shown, up to 18,7% of the total amount due shown on that invoice. The structure of the penalty is based on the value of the individual invoice, not on the taxable person's turnover during the reporting period. Proceeds from the fine constitute revenue for the state budget. The fine must be paid without a demand from the head of the tax office to the bank account of the relevant tax office, within 14 days of receipt of the decision imposing the fine. The time limit begins the moment the decision is effectively delivered to the taxable persons.

Conducting a penalty proceeding

Proceedings on the imposition of a cash fine are subject to the provisions of Section IV of the Tax Ordinance. In matters not regulated by the VAT Act, the imposition of fines is subject to the provisions of Section IVA of the Code of Administrative Procedure, which cover the general principles of administrative cash fines, including the bases for setting their amount, their mitigation and waiver. The elements of the fine itself: the acts subject to penalties, the relevant authority, the maximum amount and the payment deadline arise directly out of Article 106ni of the VAT Act. Whereas the law makers have excluded the application of Article 21a of the Business Operators Act, which provides for calling on the trader to remedy the violations before a fine is imposed.

Distinguishing between a fine and criminal tax liability

Article 106ni par. 4 of the VAT Act provides that in the event of a failure to comply with the requirement referred to in

Article 106ga par. 1, Article 106nda par. 2, Article 106nf par. 4 or Article 106nh par. 2, no proceedings shall be initiated for tax crimes or tax offenses. This exclusion is statutory in nature and applies irrespective of the ministry's announcements. Article 62 of the Criminal Tax Code continues to apply to other invoice-related violations, in particular to the issue or use of fraudulent invoices, punishable by a fine of up to 720 daily rates or imprisonment for a term of no less than one year, or both of these penalties combined. It does not, however, automatically constitute grounds for prosecution for each KSeF related violation.

KAS operations during the deferral period

The Ministry of Finance has announced that during the deferral period the National Tax Administration (KAS) will focus on assisting businesses in the proper application of the Domestic e-Invoice System and on reminding them of their obligations under the VAT Act. At the same time, the ministry specified two areas where the authorities will take action: cases of issuing invoices outside the system, except for situations specified in the act, and checking whether failure to use the system leads to inaccurate tax reporting. This announcement sets the direction for the administration's actions without altering the statutory powers of the authorities. The deferral of the penalties arising out of Article 106ni does not preclude audits or consequences arising from separate regulations if the failure to use the system is accompanied by inaccurate VAT reporting.

Monitoring the legal status and continuing legislative work

Article 106ni was added to the VAT Act by the Act of 16 June 2023 (2023 Journal of Laws item 1598) as of 1 February 2026, where paragraphs 1–3 and 5–7, which cover the grounds for a penalty, its amount, payment method and procedural rules are to apply as of 1 January 2027. The exclusion of criminal tax prosecution under paragraph 4 is already in effect. Because extending the deferral period requires a legislative change, the Ministry of Finance has begun work on a draft bill, pointing out the need to allow time for the legislative process. Until the amendment becomes effective, Article 106ni in its current wording remains in effect, and the announced extension has no legal effect.

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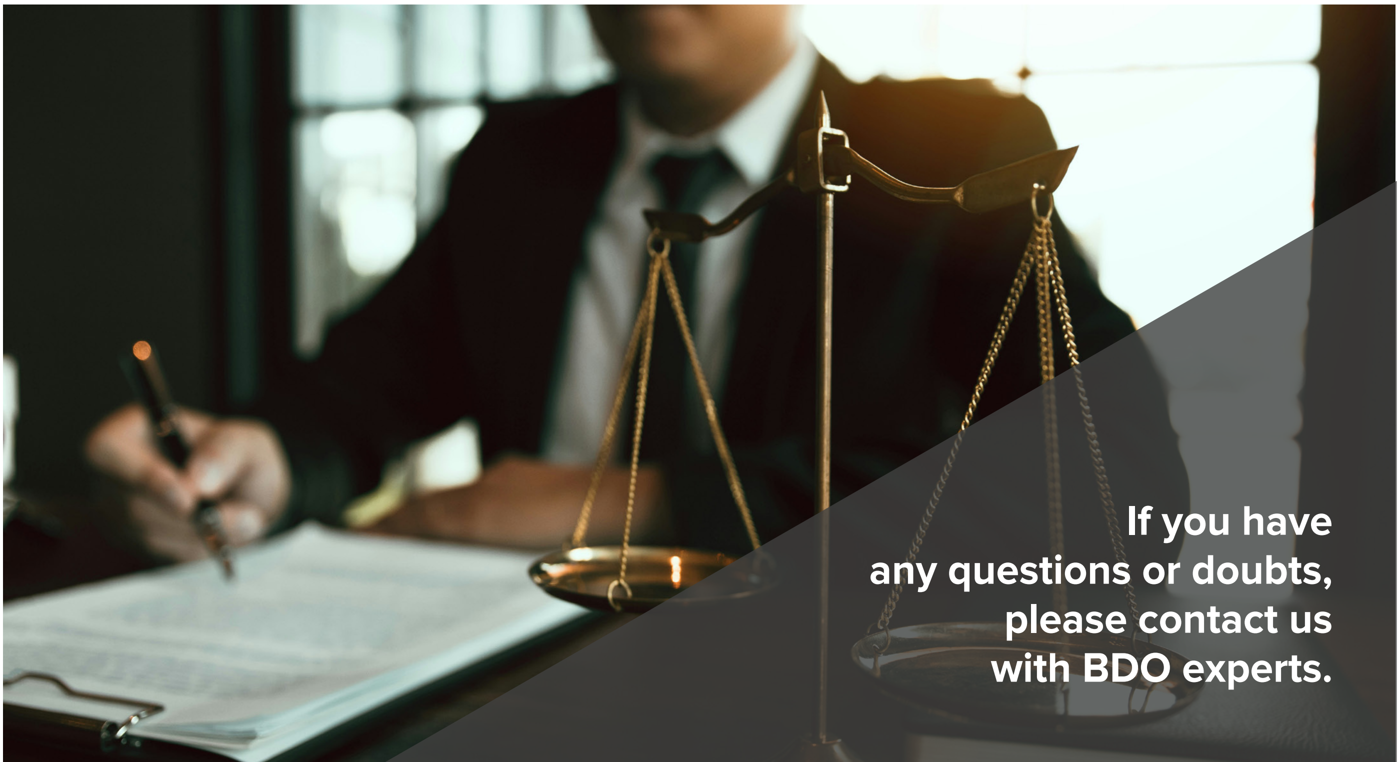

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