

New KSeF bill published by the Ministry of Finance

I. New KSeF implementation dates

On 15 March 2023 the Ministry of Finance published a new version of the Domestic e-invoice System (KSeF) bill that takes into account some of the proposals submitted during public consultations. Among others, the new version of the bill provides that mandatory e-invoicing and requirement to use KSeF will go into effect as of 1 July 2024, i.e., 6 months later than originally planned. Moreover, the current version of the bill provides for extending until 1 January 2024 the deadline for the implementation of KSeF by taxable persons subjectively and objectively exempt from VAT. In addition, until 31 December 2024 it will still be possible to issue invoices in the current form from cash registers. The bill also provides that until the end of 2024, a fiscal receipt with NIP will be recognized as a simplified invoice. This means that only as of 1 January 2025 will such receipts and other simplified invoices no longer be considered invoices.

II. Consumer invoices outside the e-invoice system

Mandatory e-invoicing will generally cover activities that must currently be documented with an invoice issued in accordance with the VAT Act. These are activities that are subject to taxation with VAT in Poland, including domestic supplies of goods and services between business entities (B2B) and to government organs (B2G). The requirement to issue structured invoices will apply to taxable persons performing activities covered by the invoicing requirement under Polish VAT regulations, who have their place of business establishment or fixed place of business in Poland (when this fixed place of business participates in the supply of goods or services). So-called consumer invoices will be left out of the KSeF. The requirement to e-invoice will not cover those taxable persons who have no place of business establishment or fixed place of business in the territory of Poland, and those who only have a fixed place of business and do not participate in the transaction. For such entities, e-invoicing will be an option.

The requirement for VAT taxable persons to issue e-invoices will be introduced six months later than initially announced, i.e., as of 1 July 2024. In addition, the new version of the KSeF (Domestic e-invoice System) bill contains several significant changes, including less severe penalties for breaching the e-invoice regulations. What is more, in the first six months of mandatory e-invoicing there are to be no such penalties at all.



III. Penalties will be lower and will come six months later

In its 15 March bill the Ministry of Finance decided to liberalize the provisions on imposing cash fines for failure to comply with e-invoicing requirements, and above all to defer their effective date. Penalties will start being imposed as of 1 January 2025, which means that for the first six months of mandatory e-invoicing the tax authorities will not be able to impose penalties. The new version of the bill provides that the head of the relevant tax office will be able to issue a decision to levy a cash fine of up to 100% of the value of the tax listed in the invoice, and for invoices that do not list the tax amount - a cash fine of up to 18,7% of the total amount due in the invoice. Cash fines will be imposed in cases when: the taxable person failed to issue an invoice using KSeF despite being required to do so; the taxable person issued an invoice inconsistently with the provided template during a KSeF outage and in the offline mode; the taxable person failed to transmit to KSeF invoices issued during a KSeF outage and in the offline mode by the specified deadline. The fines will be due and payable within 14 days. These will, however, be the only fines, as the bill does not provide for the application of the Penal Tax Code in such cases. This is in contrast to the initial draft that provided for cash fines of no less than PLN 1000 in cases where no e-invoice was issued, or was issued inconsistently with the provided template, and where the taxable person failed to transmit an invoice to KSeF the fine was to amount to no less than PLN 500.

IV. Emergency invoicing outside the system

The new version of the bill contains a solution that makes it possible to issue an invoice when for reasons attributable to the taxable person he is unable to issue a structured invoice (so-called offline mode). This refers to a case where the taxable person cannot transmit an invoice to KSeF when it is issued, while there was no announcement about a KSeF outage. In such cases the taxable person will add a verification code to the invoice and will send it to the buyer in the manner agreed with the buyer. The taxable person will then be required to transmit the invoice to KSeF no later than the next working day. Failure to comply with this requirement in a timely manner will carry the same fine as the one for failure to timely transmit an invoice issued during a KSeF outage.

V. Invoice issue date will be the invoice transmission date

The e-invoice issue date will be the date it is transmitted to KSeF. A KSeF number contains, among others, the issue date. This date is also included in the official confirmation of receipt (so-called UPO), which adopts the date the invoice is transmitted to KSeF as the invoice issue date. Once a structured invoice is assigned a KSeF number, it is put into legal circulation with the issue - transmission to KSeF date. Whereas the invoice receipt date will be the date on which a KSeF number is assigned to the invoice. This date will be visible to the e-invoice recipient in the system. In an outage or announced unavailability of KSeF, and also when a taxable person is unable to issue structured invoices (offline mode), the taxable person's completion of field P1 "issue date" in the invoice template will be considered as the issue of the invoice on the date indicated by the taxable person in that field. The date entered in field P1 will also be the date adopted and listed in the KSeF identification number assigned to the invoice once it is entered in KSeF after the outage.



VI. Corrective notes replaced with corrective e-invoices

The new bill does away with corrective notes - issued in and outside of KSeF - by buyers. According to the Ministry of Finance this was proposed as a result of the comments submitted during public consultations, where the solution was perceived as excessive (too many accounting documents). After the changes, a corrective invoice will be issued irrespective of the reason for the change. The Ministry is convinced that the introduction of e-invoicing and further digitalization of the tax accounting process will contribute to an overall improvement in the quality of the data entered on invoices, which until now, due to errors, were subject to correction on the basis of corrective notes issued by buyers. It needs to be noted that under the new regulations, corrective invoices will also be issued using KSeF. Corrective invoices issued after the law goes into effect - irrespective of whether the initial invoices were issued in or outside of KSeF (because they were issued before e-invoicing was mandatory) will be issued in KSeF.

VII. Output VAT corrected in the period corrective e-invoice issued

The bill calls for modifying the regulations on corrections that reduce the amount of output/input VAT. Further to the mandatory use of KSeF by the majority of taxable persons, a rule will be introduced whereby on the side of output VAT, the taxable base will be reduced for the reporting period in which the taxable person issued the corrective e-invoice. Taxable persons who issue corrective invoices as indicated will not, as a rule, be required to have additional documentation confirming that the new transaction terms have been agreed with the buyer. This is a simplification of the rules on correcting output tax. Similarly, the buyer will be required to correct input VAT in the period in which he received the corrective e-invoice. Both changes ensure VAT neutrality for the seller and the buyer.



VIII. Invoice issue prior to supply still possible

The Ministry's initial plan was to almost completely do away with the ability to issue invoices before goods (or services) are supplied, and before an advance is received. The new version of the bill opts out of this solution. In consequence, it will still be possible to issue invoices within 60 days prior to the supply of goods (or services). It should be noted that often times, in the case of early invoices, the date of supply is not yet known. In such cases the seller is not required to enter that date. It is, however, important for the taxable activity to take place within 60 days of invoice issue. The invoice should be issued by the 15th day of the month following the supply.



IX. New decree with additional exemptions from KSeF

Along with the new KSeF bill the Ministry published a draft of a KSeF decree. The decree is special in nature and defines some of the services which, when properly documented, may be exempt from the requirement to invoice in KSeF, as well as formulates the conditions for the application of this exemption. In defining the scope of the exemption from invoicing in KSeF the minister was guided by the specific nature of certain types of activities, the need to document them in a special manner, as well as the technical and organizational requirements associated with their documentation. To this end, the decree provides for an exemption from the requirement to issue invoices in KSeF for toll road transport services or passenger transport of any distance via: standard-gauge railways, fleet vehicles, seagoing vessels, inland and coastal transport vessels, ferries, aircraft and helicopters.



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