

## Binding VAT rate information in Poland

Polish tax authorities issue binding VAT rate information (BVRI, Polish: WIT or *wiążąca informacja stawkowa*).

In Poland the correct VAT rate depends mostly on the CN (combined Nomenclature) classification for goods and PKWU 2015 (local statistical classification) for services.

### What is a binding VAT rate information?

A WIS issued by the tax authorities gives the correct CN classification for the product and a VAT rate applicable on the sale of this product.

### Who may apply?

WIS is issued for an entity who has a legal interest in receiving this decision, in particular a party that sells or intends to sell goods/ services subject to VAT in Poland. WIS is not issued to an anonymous applicant. It is also not issued for a party which in no way is involved (does not intend to be involved) in the sale of a product/ service.

### Is it mandatory to have a WIS?

It is not mandatory that you have a WIS decision issued for goods or services. You may also establish a Polish VAT rate applicable to your sales transaction without the WIS decision. WIS offers a guarantee of unchanged VAT rate (discussed below), which is appreciated by many taxpayers. This guarantee coupled with an accessibility of WIS issuing process and low application fees explain why WIS is generally a popular tax protection document in Poland.

### What is the application process?

The application for issuing WIS is submitted on the official form (WIS-W). You should give all the data in the form according to your best knowledge. The application includes a written statement that providing false information may involve criminal liability for the applicant.

You may not apply for a WIS once there is an ongoing tax inspection concerning your VAT settlements. Therefore, once the VAT controversy arises, you will not be able to ask for WIS.

The application asks various questions concerning the product/ service. First of all, a detailed description of the classified product is necessary. This includes e.g. a list of ingredients (also giving a % in total contents), the production process and methods, the raw materials used, the description of packaging. One may attach schemes, pictures, photos, catalogs, certificates, instructions, documents, e.g. concerning other classifications of the same or similar product issued in another jurisdiction.

In terms of data provided, the process of issuing WIS is similar to issuing a BTI (binding tariff information for trade with countries outside of the EU).

In essence, BTIs received for a given product in another EU jurisdiction is expected to be attached to the WIS-W form. If a BTI for a similar product has been issued (either for the applicant or for a third party) such BTIs are very helpful as a supporting document for WIS application. On the other hand, the BTIs issued for a given product are not a decisive argument for the same classification to be confirmed by the authorities within WIS.

It is not mandatory in a WIS-W to disclose what code one believes or knows is the most appropriate for the product. You may propose what code you believe to be correct for the product.

You do not have to attach sample products to your WIS application. However, the authorities may request that a sample product is provided for further examination, e.g. in the official laboratories, once they read your application and decide that product should undergo a more detailed analysis.

The authorities may also ask you further question concerning the product, if they believe some data is missing in your description. They will send a letter asking for further explanation and information and usually will give a 7-day deadline to provide this data.

You may send your application via traditional post or via internet (access Epuap – a government electronic service).

### **Is it possible to receive WIS for a product which is not produced yet?**

Generally, in order to receive WIS you have to provide a full and detailed description of the product. The WIS is issued only for the product as described in the application, so if there are further modifications to the product after you receive your WIS, your WIS will not offer you any tax protection for the modified product

### **Is it possible to withdraw my WIS application?**

You may decide to withdraw your application for WIS for any reason, before the WIS is issued. Usually it is possible to talk to an official assigned to decide your case, so you may contact them via phone and discuss your application. If for any reason you would like to withdraw it, you may do it at any stage before your WIS is issued.

### **How long does it take to receive a WIS?**

The WIS is issued typically within 3 months of filing an application. The fee for the application is 40 PLN (ca. EUR 10). This fee is paid for each classified product separately.

If the sample has to undergo specialist tests or analyses, further fees for tests may come up. The authorities will let you know beforehand that e.g. a lab analysis is necessary for the proper classification of the product and what the cost is. After you cover the costs, the WIS issuing process goes on.

### **How long is a WIS valid?**

WIS is valid from 5 years upon the date of issuance. In certain cases it may expire before the 5-year time period. This would, for example, happen if there is a change in law concerning VAT rates for a product. In this instance, your WIS becomes automatically invalid once the VAT law modification goes into force. WIS may also be changed if amendments to the Combined Nomenclature or explanatory notes take place or if case law of ECJ concerning a product results in a change to the CN classification. WIS may also be modified by the tax authorities if an incorrect assessment of the background data resulted in erroneous classification.

### **What tax guarantees does WIS offer?**

WIS offers a guarantee that (provided the background data given in the application are accurate), the tax office may not change the classification of the product, and thus may not change the VAT rate applied by the holder of WIS.

WIS offers this guarantee to any seller of the product, not only to the entity which applied for WIS. It is binding for every entity in the distribution chain as long as the product is simply resold without modifications. WIS is thus typically shared by the entity which received it with all the distributors of the product.

### **Does WIS issued for third parties offer any tax protection for me?**

All the WIS documents issued in Poland are publicly available after the applicant data any data concerning the product/ service classified by the applicant as sensitive have been anonymized. If you find a WIS in the database that concerns the product which is

sold by you or which is very similar to your product, you may also enjoy the guarantee of tax protection from VAT rate changes.

Enjoying this protection resulting from third-party WIS issued in public databases is in practice in many cases difficult, as the applicants tend to request that a lot of product data, such as detailed ingredients lists and production process, is classified as thus unavailable publicly. This makes it difficult to say whether the product you sell is sufficiently similar to a publicly available WIS to claim any tax protection.

The database of WIS (in Polish) is available here:

<https://www.kis.gov.pl/informacje-podatkowe-i-celne/wiazace-informacje-stawkowe-wyszukiwarka>

## **What if you do not agree with the contents of your WIS?**

You do not have to agree with the WIS decision issued. If you do not agree with the classification and the VAT rate proposed by the tax authorities, you may appeal (within 14 days of the receipt of WIS) to the tax authorities and ask to change their decision, giving your arguments. The authorities have 2 months to resolve your appeal case and send you the result. Once your appeal is not successful, it is also possible to file a complaint to the administrative court. At this stage the case is heard by the court (of 1<sup>st</sup>, and later, if unsuccessful, 2<sup>nd</sup> instance). The proceedings before the court usually tend to drag for ca. 1-3 years from the date you issued your complaint.

In the meantime, the WIS decision is not suspended, but it is binding for the tax authorities.

If you receive a WIS which gives a classification and VAT rate you do not agree with you are not bound by its wording. You may apply any rate you believe is correct for the sale your product. The local tax office, is, however, bound by the result of the WIS. So in case there is a tax inspection of your VAT settlements, you can be sure they will stick to the WIS decision. Therefore, if you do not agree with the decision, make sure you prepare a convincing defence file, listing your legal arguments to uphold your position.

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