



## Tax&Legal Highlights

### Poland

#### **Mandatory electronic filing of financial statements. The President signs the Act**

On 12 February 2018, the President signed the Act changing the Act on the National Court Register, which also introduced amendments to the PIT Act, the CIT Act and the Accounting Act. The adopted amendments introduce the requirement of electronic filing of financial statements for entities obliged to keep their accounting records in accordance with the Accounting Act and those who keep full accounting records.

The financial statements should be signed with a qualified electronic signature or ePUAP trusted profile. Both the logical structure and the format of reporting files will be determined in the regulation of the Minister of Finance and made available online on Public Information Bulletin website of the Ministry of Finance. Additionally, during the meeting of the Extraordinary Committee for Deregulation on 24 October 2017, it was indicated that the proposed changes would most probably be implemented by adding a new structure to the so-called Standard Audit File-Tax (SAF-T). Moreover, the Ministry of Finance will also determine whether electronic filing of financial statements will cover only one or several files corresponding to each of the reporting elements (e.g. reflecting a profit and loss account or a

balance sheet). If this solution is introduced in Poland, the Ministry will be able to get a comprehensively view of the financial position of companies. What is more, thanks to the electronic form of financial statements the authorities will be able to crosscheck information disclosed in the statements with that provided in other SAF-T formats.

**The key changes:**

- PIT payers keeping the accounting records and CIT payers will file financial statements in electronic form (i.e. separate and consolidated statements except for consolidated financial statements prepared in accordance with the International Accounting Standards);
- Taxpayers not registered in the National Court Register will provide financial statements directly to the Head of the National Revenue Administration (entities registered in the National Court Register will file financial statements to the National Court Register);
- The National Court Register will keep a repository of financial documents for each entity required to submit financial documents to the National Court Register;
- The documents kept in the repository will be sent to the Central Register of Fiscal Information kept by the Head of the National Revenue Administration.

Significantly, the European Securities and Markets Authority (ESMA) must determine the format of financial statements prepared in accordance with the International Accounting Standards before local regulations are implemented.

The Act also introduces a significant change to the Tax Code (Article 274(a).1), whereby tax authorities may demand the rationale for the failure to submit the financial statements or request such documents. Consequently, pursuant to Article 262.1.2a of the Tax Code, any entity that fails to comply with the requests of the tax authorities may be punished with a fine of PLN 2,800, which may be reimposed.

**The Act was signed by the President on 12 February 2018. The provisions on electronic filing of financial statements will come into force on 1 October 2018 and will also apply to financial statements for 2018.**

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**Transfer Pricing - extension of the deadlines for transfer pricing documentation**

**On Friday, February 16, 2018 Polish Ministry of Finance announced to be working on approx. 6 months extension of the deadlines for transfer pricing documentation and CIT-TP/PIT-TP forms regarding transactions made by taxpayers in 2017 and 2018.**

According to the Announcement of the Ministry, the proposed regulation intends to extend these deadlines until the last day of the ninth month after the end of the tax year (currently the deadline is the date of filing annual tax returns). In practice, taxpayers whose tax year ended December 31, 2017 would be required to prepare documentation and submit an appropriate statement confirming preparation of the tax documentation to the tax office, and attach CIT-TP/PIT-TP form to the annual tax return by September 30, 2018.

Currently the internal consultation with respect to the draft regulation are carried out. The Ministry plans to issue the document in February 2018. The objective of the extended deadlines in the first two years after implementation of the new requirements is to address taxpayers' needs and simplify the tax system.

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**The Bill on employees' capital pension scheme (PPK) is already available on the website of the Government Legislation Centre. The new law will come into effect as of 1 January 2019.**

**The Government Legislation Centre published the long-awaited Bill on employees' capital pension scheme on its website.**

### **Implementation schedule**

The effective date of the act is planned for 1 January 2019.

When the Act enters into force, the obligation to conclude agreements for the management of employees' capital pension schemes ("PPK") with fund management companies ("TFI") will apply to employers with the headcount of at least **250 people** and then successively to:

- employers with the headcount of at least **50 people** - from 1 July 2019;
- employers with the headcount of at least **20 people** - from 1 January 2020;
- all employers (including micro-enterprises employing up to 9 people) from 1 July 2020.

Importantly, the obligation to conclude a PPK management agreement will also apply to entities that only cooperate with persons under civil law contracts (with the exception of self-employed individuals) and do not employ staff on a standard basis, or even those paying remuneration only to members of supervisory boards for performing their functions and for whom the entity pays compulsory contributions for retirement and disability insurance.

The obligation will also apply to foreign employers hiring Polish staff, contractors or members of supervisory boards, who are obligatorily covered by pension and disability insurance in Poland. In practice, it will apply to all EU companies which employ people in Poland, when the law also applies to micro-enterprises (probably as of 1 July 2020).

### **The employer will select PPK**

The employer will be required to conclude a PPK management agreement with only one TFI, but it will be able to choose from among PPKs established and managed by various TFIs (also private entities).

All available PPKs will be published on the website of the State Development Fund. In practice, an entity already employing staff will have 90 days from the date when the new law comes into force for the selection and signing of a PPK management agreement. (For new employers it is 90 days from hiring the first employee). The employer will be obliged to consult the company's trade unions or other organization representing its employees before selecting the PPK.

If the employer does not enter into a management agreement with the fund management company on time, the State Development Fund will demand that such management agreement be concluded within the next 30 days. Such demand will be sent based on information provided by the Social Security Institution on the last day of February each year. After the lapse of the deadline, the employer will be allocated to a fund management company **by force of law** (even without any agreement), in which the State

Development Fund holds a majority interest. The agreement will be effective from the day following the lapse of this additional 30-day period.

Importantly, the Act provides for a fine of **PLN 1,000 to PLN 30,000** for a person "obliged to act on behalf of the employing entity" for evading the obligation to conclude the PPK management agreement on time. Persistent evasion from this obligation may not only lead to a fine (calculated according to the provisions of the criminal law), but also to additional two years of imprisonment or restriction of liberty.

### **Employees participating in PPK**

Employees will automatically join the PPK. The employer is obliged to conclude a PPK management agreement with a fund management company for and on behalf of each employee (including contractors and members of supervisory boards who receive remuneration) within **7 days after the lapse of a 90-day period from the date of employment**. If it fails to do so, a legal relationship resulting from the PPK management agreement between the employee and a fund management company with which the employer has concluded a PPK management agreement or a fund management company controlled by the State Development Fund shall be deemed established by law on the first day after the lapse of the deadline or as of the date the PPK management agreement is deemed concluded.

The Act provides for a forced transfer payment from previous PPK of the employee to the PPK of the current employer, unless explicitly refused by the employee. One person may have PPK accounts with various fund management companies.

Every employee may decide not to make contributions to the PPK by submitting a written declaration to the employer. The declaration does not terminate the PPK management agreement, but only suspends the employer's obligation to pay contributions to PPK for such an employee. The declaration is to be valid from the next month after its submission, so **the employer will have to pay contributions to the PPK for at least one month**.

The declaration is valid for 2 years, therefore payment of PPK contributions for employees who resigned from participation in the PPK after the Act entered into force should restart on **1 April 2021**, and then every two years (1 April 2023, 1 April 2025 etc). A person who has previously decided against payment of contributions to PPK can change the decision at any time by submitting a written declaration.

Importantly, the Act introduces a criminal provision for persuading employees not to join PPK. A person authorized to act on behalf of the employer or acting on its initiative will be subject to a fine, restriction of liberty (up to 12 months) or imprisonment of up to 2 years.

### **The amount of contributions to PPK**

The basic contribution financed by the **employer** will amount to **1.5% of monthly remuneration** and can be increased by a voluntary contribution to 2.5% of the remuneration (to be decided by the employer). The basic contribution of the **employee** will amount to **2% of the remuneration** (the monthly net income of the employee will be reduced by the same amount) and can be voluntarily increased by the employee by another 2% of the remuneration.

**PPK versus PPE**

The Act on PPK will not apply to employers running the Employee Pension Scheme (PPE) and paying a basic contribution of at least **3.5% of the remuneration** as of the date when the Act enters into force. Such employer will not be obliged to enter into agreements with fund management companies. Currently, the Bill does not specify the minimum period of the Employee Pension Scheme agreement valid before the effective date of the Act. The requirement that a given employer should have run the Employee Pension Scheme for at least six months was discussed before, but it was not introduced.

The Act on PPK will **automatically apply** to employers who run Employee Pension Schemes when they:

1. discontinue accruing and paying basic contributions to the Employee Pension Scheme;
2. reduce basic contributions to the Employee Pension Scheme to less than 3.5% of the remuneration;
3. are late with payment of basic contributions to the Employee Pension Scheme for more than 90 days;
4. liquidate the Employee Pension Scheme.

The Bill on PPK provides for the amendment of the Act on the Employee Pension Scheme (PPE) to enable:

1. participation in PPE for individuals employed under an agency contract, contract of mandate, service agreement, persons receiving remuneration for performing their functions on supervisory boards (not mandatory - their participation in the PPE is to be decided by the amended workforce agreement);
2. transfers from PPK to PPE (and vice versa);
3. reduction of costs and fees charged by a financial institution to 0.6% of the total funds managed per annum;
4. independent voluntary contributions to PPE by participants who are no longer employed by the employer (if provided for in the workforce agreement).

In accordance with the Bill, if the Employee Pension Scheme does not cover individuals employed under civil law agreements and members of supervisory boards (from 1 January 2019), the employer who will run the PPE **will be obliged to create a PPK for those individuals** within the deadlines for concluding PPK management agreements with fund management companies and to enter into individual PPK management agreements for those employees (supervisory board members).

**Investment activities of PPK**

The bill does not specify eligible investments of fund management companies running PPK. It requires that at least four investment funds (or sub-funds) be managed, following different investment policies. Contributions will be allocated to selected funds, depending on the age of participants. If a

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participant approaches the retirement age, his or her contributions should be allocated to low risk funds.

The State Development Fund will be able to influence investment decisions of fund management companies in which it holds majority interest. The Polish Financial Supervision Authority will supervise the activities of other fund management companies (including foreign ones - but only to the extent specified by the Act).

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