Tax&Legal Highlights

Poland

Transport package – amendment in progress at the Sejm

On 5 January 2018, the Sejm received a bill amending the act on the system of monitoring the road transport of goods and some other acts (hereinafter: "draft" or "amendment"), which introduces new regulations in the field of the so-called transport package.

The planned amendment of regulations is to introduce an extension of the obligation to monitor the transport of goods also by rail transport. Attention should be paid to the other very important modifications introduced in the draft.

Extension of the obligation to railway transport

The purpose of extension of the obligation to railway transport is to ensure more effective monitoring of the transport of goods sensitive to the state budget revenues. The reason for introducing this regulation was the fact that the number of transported products by rail increased significantly in 2017, as compared to 2016.

The draft introduces a new definition of freight transport. It will be understood as transport on a public road or on the national rail network. In the case of railway transport the definition of a vehicle considers a railway vehicle

without a drive (wagon), while the driver will be a train operator - a person operating the railway vehicle with a drive.

In the case of a declaration of carriage of goods by road, the railway freight carrier will be obliged to provide additional data in the application, such as: (i) train number, (ii) unified wagon code, or (iii) location of the railway siding on which the inspection can be carried out, located closest to the place of delivery of the goods or the destination where goods are to be transported within the territory of the country.

However, rail transport will be less flexible when it comes to the possibility of stopping the vehicle, which results from the nature of rail transport. The regulations do not provide for carrying out inspections during transport on the entire railway network, and will be implemented e.g. on railway sidings at the place of delivery of goods or in railway customs offices.

Withdrawal of PKWiU and changes related to classification to CN codes

The draft assumes the withdrawal from grouping of goods in accordance with the Polish Classification of Products and Services (hereinafter: "PKWiU" as Polska Klasyfikacja Wyrobów i Usług), while remaining in determining the type of goods based on the Combined Nomenclature (hereinafter: "CN"). The amendment is to allow reduction of administrative burdens and interpretation doubts during the application of the provisions of the Act on the transport package (mainly resulting from alternate use of PKWiU and CN).

It is worth noting that according to the current wording of the draft, the transport of goods under codes CN 2905 and 3824 will be subject to the transport monitoring system, provided that these goods are listed in Appendix 1 to the Excise Tax Act, regardless of their purpose.

In line with the justification for the amendment, the above amendment aims to clarify the provisions. The proposed changes were intended to cover only products under CN 2905 and 3824 codes that are excise goods with the monitoring obligation.

Additional changes have been anticipated for products under CN 2707 and 3814 codes which, according to the draft, will not be subject to monitoring if they are transported in unit packaging of not more than 11 liters.

Group declarations

At present, the declaration of the carriage of goods concerns a specific quantity of the same type of goods transported from one sender of the goods to one recipient of the goods, to one place of delivery of the goods, by one means of transport. This means that the declaration cannot cover goods with different four-digit CN codes, e.g. 2710 and 3403. The new form of the declaration will allow sending one declaration to the register in the case of different goods (various four-digit CN items) to one recipient and to one place of delivery in one means of transport. It will therefore be able to declare goods from various CN codes, e.g. 2710 and 3403, provided that the quantity of each exceeds 500 kilograms or 500 liters.

The text of the draft, however, shows that cases where one declaration may include several deliveries with different CN codes will be specified in the

Ordinance of the Minister of Development and Finance, issued on the basis of the amended Act.

It will be possible in some situations, taking into account above all the nature of the type of transport, accompanying technical conditions, the specificity of transporting a given good or the type of transaction to be declared.

In addition, for some transports of goods, the obligation to submit a registration request may be excluded. This right will be possible in relation to all or part of the obligations under the Act. For example, the exclusion of the obligation may include supplementing the declaration or updating it.

However, in the case of this exemption, restrictions must be borne in mind. Despite the lack of detailed information on the conditions of its application, it was pointed out that the list of goods that may be exempted will be specified in the regulation of the Minister of Development and Finance, based on the statutory delegation, which was specified in the draft.

Medical products

The amendment provides for extension of the catalog of types of goods that are to be subject to the goods monitoring system, for medicinal products, special foods and medical goods. According to the justification for the amendment, these products are threatened by the lack of availability in Poland in connection with their export abroad, which determines their inclusion in the scope of the Act. A list of such products and goods shall be announced by the minister competent for health matters at least every 2 months, by means of an announcement.

What's next?

The regulation is to enter into force after 14 days from the day of announcement. Currently work is underway in the Sejm, the draft is still in the first reading.

The draft is, among others, a response to postulates of entrepreneurs – the amended provisions introduce many changes and explain significant interpretation doubts. The way in which entrepreneurs will benefit from the new regulations in the future depends on the appropriate preparation.

However, it should be noted that the Act will extend the obligations related to the monitoring of transport to other industries and means of transport. Therefore, we recommend considering the implementation of appropriate procedures or mechanisms for managing the company's risk. Training for employees or amendment of contracts with contractors may be necessary first of all for railway carriers. At the same time, it is very important that companies from the pharmaceutical sector introduce appropriate mechanisms, mainly due to the recent rapid pace of legislative work and relatively short vacatio legis.

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Amendment to the Act on Foreigners. Implementation of the ICT Directive on intra-corporate transferees and their mobility in the EU

On 12 February 2018, the provisions of the amended Act on foreigners implementing in the Polish legislature the provisions of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and stay of third-country nationals as part of an intra-corporate transfer come into force. (Journal of the EU L 157 of 27 May 2014, page 1), hereinafter referred to as the ICT Directive. The provisions of this directive are part of the common migration policy within the EU, and their main purpose is to facilitate – third-country managerial staff, professionals and trainee employees – entry into the EU as part of an intra-corporate transfer (related parties) and moving towards work in related parties in other EU countries (the so-called mobility).

Work on a comprehensive amendment to the Act on foreigners ended at the end of November 2017. The Act of 24 November 2017 amending the Act on foreigners and certain other acts (Journal of Laws of 12 January 2018, item 107) was signed by the President in December 2017 and published in January 2018. In addition to the provisions related to the implementation of the ICT Directive, the amendment also includes other important changes related to the legalization of stay of foreigners in Poland, which come into force as early as next month or from 1 January 2019.

Transfer of employees within related enterprises (Intra-corporate transfer) and mobility within the EU

The ICT Directive was adopted to facilitate mobility for intra-corporate transferees within the EU ('intra-EU mobility') and to reduce the administrative burden associated with working in several Member States. To this end, the Directive establishes a special intra-EU mobility scheme according to which the holder of a valid intra-corporate transfer permit ('ICT permit') issued by one Member State has the right to enter, stay and work in one or more Member States in accordance with with regulations regulating short- and long-term mobility.

EU mobility provisions are implemented for third-country nationals who are employed by international entities located outside the EU and qualify as formerly mentioned personnel (managers, specialists and trainees) and then transferred to affiliates of an international company for temporary work on the territory of EU Member States. After completing the ICT transfer, which lasts a maximum of three years (one year for trainees), the employee must return to the parent company or other affiliate with a seat outside the EU. The ICT Directive should be implemented to the legal orders of individual EU member states until 29 November 2016. Despite this deadline, some Member States are still working on the implementation of mobility provisions (including Belgium, Sweden, Greece and Finland). It is also worth noting that some Member States have exempted from the obligation to implement the Directive: Denmark, Ireland and the United Kingdom.

Temporary residence permit for the purpose of carrying out work as part of an intra-corporate transfer and for the use of long-term mobility

As part of the amended provisions of the Act on foreigners, a new category of temporary residence permit has been added for foreigners who work with a foreign employer established outside the EU and their first or longest stay within the framework of an intra-corporate transfer will be a stay (and work) in the host entity Poland. However, obtaining a temporary residence permit requires a number of formal conditions to be met by a foreigner, including possession of relevant professional qualifications and experience necessary in the host entity, or a specified length of service in the parent entity before the transfer (at least 12 months in the case of a managerial or specialist employee and 6 months in the case of working as an employee during internship).

A residence permit for the use of mobility is another new category of permit introduced as part of the amendment. Mobility is understood as the entitlement of a foreigner to enter and stay within the territory of an EU Member State in order to perform work as a manager, specialist or an intern in a host entity based in a given EU country as part of an intra-corporate transfer that results from having a foreigner of a residence permit of ICT issued by another EU country than the one in which he/she uses mobility. Permits to use long-term mobility (over 90 days) are granted for a period not exceeding the period of validity of the ICT residence permit held by another foreign national, issued by another EU country, with the proviso that the internship permit is granted for up to one year.

In contrast to the immigration procedures currently in force for obtaining a temporary residence permit by foreigners in Poland, the receiving unit is the only party to the proceedings. This means that the application for a temporary residence permit is issued by the host entity having its registered office on the territory of Poland to the voivode competent for the headquarters of this entity. Therefore, a foreigner who will be involved in a transfer within a group of enterprises, is not obliged to appear in person at the office to submit an application for a residence permit, as in the case of other residence procedures. A residence permit should be issued by the competent voivode within 90 days of submitting the application along with the documents required in the process. After obtaining a residence permit, the foreigner applies to enter the territory of Poland based on a special entry visa and upon arrival can apply for a residence card in Poland (with the entry "ICT").

Short-term mobility

In order for a foreigner to benefit from short-term mobility within the territory of Poland (up to 90 days of stay in the period of each 180-day interval), the entity hosting the given employee as part of the transfer within the group in another EU country (which has issued the ICT permit) should submit a notification in Polish to Head of the Office for Foreigner Affairs in Poland with information that the foreigner intends to use mobility and work within the territory of Poland for the given hosting entity. In the case of the short-term mobility procedure, no residence permit is issued by the local voivodship office, and the foreigner may legally enter and stay within the territory of Poland based on a residence card (with the "ICT" note) issued by another EU member state.

Other important changes concerning the legalization of stay of foreigners in Poland

The amended regulations introduce the possibility for foreigners to apply for a temporary residence permit and work from the beginning of 2019, if the purpose of their stay in Poland is to perform work **in the profession desired for the Polish economy**. To grant this type of temporary residence permit, the starosta's information about the lack of meeting staffing needs (the so-called local labor market test) will not be required. The list of professions desired for the Polish economy will be specified in the ordinance to the act by the minister competent for labor issues in agreement with the minister of economy, taking into account the needs of the labor market for professions for which there is a deficit of employees in the entire country. Foreigners who have a permit to stay and work in occupations desired for the Polish economy, will be able to stay out of work for a maximum of three months and no more than twice during the period of validity of the permit (without the threat of withdrawal of residence permit). However, the biggest benefit of having this type of temporary residence permit will be the possibility of applying for a permanent residence permit after 4 years of residence in Poland on the basis of a temporary residence permit and work in the profession desired for the Polish economy.

Another change introduced to the Act on foreigners is the establishment of a legal framework enabling control and management of migrations of foreigners to Poland for purposes related to the performance of work and running a business – the possibility of imposing limits in the future on issued residence permits for foreigners in connection with work, business activity or as part of an intra-corporate transfer. Regulations providing the possibility of imposing limits by way of an ordinance by the minister in charge of internal affairs shall come into force from 1 January 2019.

The amendment to the act is also aimed at improving some of the existing immigration procedures, taking into account the practical experience of offices and foreigners in the application of the current regulations. Certainly, the introduction of new duties for foreigners in Poland should be noted, the most important of which seems to be the introduction of the **requirement of knowledge of the Polish language** in the case of foreigners applying in Poland for a long-term resident's EU residence permit.

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Introduction of a new daily reporting obligation. On 13 January the regulations of the Act on STIR (Teleinformation System of the Clearing House) came into force

On 13 January 2018, the provisions of the Act amending certain acts in order to counteract the use of the financial sector to tax fraud (the "Act") published on 29 December 2017 in the Journal of Laws, entered into force. The provisions of the new act are introduced by STIR ("IT System of the Clearing House"). The changes provided for in the Act are related not only to the introduction of a new obligation to report daily on the opened and closed accounts of qualified entities, or transactions carried out with their use, but also with changes to the existing regulations. We encourage you to familiarize yourself with the preliminary analysis of the regulations that we present below.

First of all, indicate what is the statutory definition of "qualified entity". According to the analyzed regulations, this category is understood very broadly. It covers the owner of an account being an entrepreneur, a legal person, an organizational unit without legal personality, or a natural person conducting a profitable activity on his own account, not being an entrepreneur.

One of the main assumptions of the STIR mechanism itself is the receipt and processing of data (on bank accounts opened and closed and transactions on these accounts), enabling the determination of the so-called risk indicator, which is a set of unpublished parameters, used to determine if the qualified entity does not use the activities of banks and credit unions (SKOK; Cooperative savings and credit unions) for purposes related to tax fraud. These data will be automatically transferred by banks and credit unions to STIR on a daily basis – for the previous day. If risks are identified - also through STIR – appropriate information will be forwarded to the Head of the National Tax Administration, which, using the return communication – will be able to transfer the decision to block the account to the appropriate bank or trade union.

The risk indicator will be determined on the basis of data received from banks, credit unions and those received from the Central Register of Entities of the National Register of Taxpayers (CRP KEP) and is to be determined at least once a day. Banks and credit unions will be obliged to submit data on opened accounts to the clearing house without delay, but no later than by 12:00 on the day following the opening of the account. They will also be required to immediately submit daily transaction statements on the accounts of qualified entities, however, no later than 15:00 on the day following the transaction. STIR is to be a two-way system, transferring information to the Head of the National Tax Administration, as well as its provisions to banks and credit unions.

The first reporting that will be carried out (by banks and credit unions) will, however, include a much broader scope of information. In the case of information reporting:

1) on opening and closing qualified accounts, along with the first report it will be necessary to send information on accounts opened before the Act enters into force and on the day of its entry into force and on accounts open from the day of entry into force of the Act until the day preceding the information transfer. In the case of savings and

current accounts and savings accounts of natural persons – the first transfer will also cover closed accounts between 1 January 2016 and the date of entry into force of the Act;

2) on transactions – along with the first transfer of transaction statements – the statement includes data obtained from 1 January 2016 to the day preceding their transfer (in the case of accounts opened before the entry into force of this Act and kept as of the date of entry into force of this Act and on accounts open from on the day of entry into force of this Act by the day preceding the day of submitting the statement).

Under the provisions of the Act, the following accounts are excluded: qualified entities maintained by the National Bank of Poland (for example, budget accounts); cooperative banks operated by an associating bank; banks run by other banks; cooperative savings and credit unions operated by the National Credit Union or by another bank; Treasury; National Health Fund; Social Insurance Institution and the Bank Guarantee Fund.

It is also worth noting that the Act introducing STIR amends many acts, primarily due to the introduction of a new method (and scope) of reporting data by banks and credit unions to the Head of the National Tax Administration, as well as a new legal institution - blocking a bank account, based on a decision Head of the National Tax Administration. The decision on blocking is made by the Head of the National Tax Administration on the basis of the results of the risk analysis carried out automatically by the STIR mechanism. It is worth emphasizing that the premise here is the mere suspicion that the account entity (account owner) may use the bank account for activities related to tax fraud or activities aimed at such extortion. This provision may specify a blocking time of up to 72 hours, however, in certain cases – the blocking may be extended up to three months. Such an extension will, however, be effective provided that a decision on the extension of the block to the bank or credit union is forwarded during the period of the invalidity of the invoice. Regulations in this regard, in accordance with the transitional provisions contained in art. 27 of the Act, will come into force after 4 months from the day of announcing the Act. Attention should also be paid to the remaining provisions regarding the blocking of certain claims (e.g. the seizure of maintenance and disability maintenance allowances awarded by way of damages, the seizure of claims made in order to enforce tax or customs duties.

In addition, if the bank or credit union (SKOK) fails to provide the information and statements to the clearing house or transfers them contrary to the information available, it does not block the account, it is subject to a penalty imposed by the head of National Tax Administration, up to PLN 1,000,000. The same is the case for a clearing house that does not comply with the obligation to conduct STIR, to determine and pass the risk indicator and to mediate in the exchange of information and demands between the Head of National Tax Administration and banks and credit unions.

STIR – calendar:

- Entry into force of the regulations - 14 days after the announcement;
- Commencement of transmission of information on opening / closing an account - no later than 30 days (banks) / 60 days (credit unions and cooperative banks) from entry into force of the provisions;

- First transfer of daily information about transactions – no later than on the last day of the 6th month (banks) / 8th month (credit unions and cooperative banks) from the day of entry into force of the Act;

- Exception: Information and statements of data obtained prior to the entry of the Act – may be reported until the end of the 9th month after the entry into force of the Act, if the financial institution has them in a format that does not allow their automatic processing.

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The Sejm accepted the Senate's amendments to the law on the prohibition of trade on Sunday and on holidays

On January 10th, the Sejm accepted all the Senate's amendments to the act on limiting trade on Sundays and holidays

The Senate has clarified certain exemptions from the prohibition provided for in the Act, including the definition of florists, bakeries, confectioneries and ice-cream shops by indicating that only those commercial establishments will be considered to be dominant in the trade of flowers, bakery and confectionery, respectively. A similar narrowing has not been introduced in relation to petrol stations.

The description of the exclusion of a trade prohibition in relation to retail outlets where the trade is run by an entrepreneur who is a natural person only in person by adding that the entrepreneur must conduct this activity on his own behalf and on his own account is supplemented.

Some other exclusions and grounds for criminal liability have also been clarified.

The act is to enter into force on 1 March 2018. In 2018, trade will be allowed in principle on two Sundays a month, in 2019 on one only. From 2020, the prohibition on trade will cover virtually all Sundays of the year. The statutory restrictions on the opening time of commercial establishments on Christmas Eve and on Holy Saturday will also be introduced. On these days, the stores can only be open until 2pm.

The Act has been sent to be signed by the President.

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New requirements on the remuneration of insurance distributors are approaching. Work on the implementation of the IDD Directive is entering the last phase

On 28 December 2017, President Andrzej Duda signed the Act of 15 December on insurance distribution, which implements the Directive of the European Parliament and of the Council (EU) into the Polish legal order. The new regulations enter into force on 23 February and are to serve primarily to improve the situation of clients who are to be provided with protection at the same level, regardless of the differences between the various insurance distribution channels.

The new regulations are to serve primarily to improve the situation of clients who are to be provided with protection at the same level, regardless of the differences between the various insurance distribution channels. The new law imposes on every insurance distributor, not only an agent and a broker, but also an insurance company and its employees, an obligation to behave honestly, fairly and professionally, in accordance with the best interests of clients.

In particular, the new regulations introduce unknown in the past requirements as to the remuneration of insurance distributors and persons with whom the activities related to insurance distribution are performed. The way these entities are remunerated may not be inconsistent with the obligation to act in accordance with the best understood interest of clients. This means, in particular, that **no insurance distributor can make arrangements (e.g. regarding remuneration or sales targets) that could be an incentive to propose a contract to a client, while another contract would better meet the needs of that client** [2].

Any commission, fee, salary or any other payment, including an economic advantage of any kind, or any other incentive or encouragement, both financial and non-financial, offered or transferred in connection with the insurance distribution business is considered remuneration.

At the same time, extensive information obligations related to the remuneration method were imposed on insurance distributors. Before concluding an insurance contract or insurance guarantee, both an insurance agent, an agent offering supplementary insurance, an insurance broker and an insurance company is obliged to inform the customer about the nature of remuneration received in relation to the proposed contract conclusion. Information provided by the agent and broker must in particular indicate whether the broker receives a fee paid directly by the client, a commission included in the amount of the insurance premium, or other type of remuneration or remuneration combining different types of remuneration. If the broker receives a fee, he must also inform the customer about its amount or, if applicable, the method of its calculation.

In the case of life insurance contracts with an investment element, the client should also receive information on the amount of the distribution cost indicator related to the contract proposed to the client.

It should also be pointed out that the insurance company is required to store documents regarding the agent's remuneration and the insurance broker's documents regarding its remuneration, for a period of 10 years from the date of termination of the agency agreement or respectively termination of cooperation with the client.

It is worth taking a look now at the method of remunerating agents and persons performing activities related to insurance distribution in order to adapt them to the introduced changes before they enter into force.

[1] Directive of the European Parliament and of the Council (EU) 2016/97 of 20 January 2016 on distribution of insurance (OJ L 26, 2.2.2016).

[2] Article 7 paragraph 2 of the Act of 9 November 2017 on insurance distribution (in the version adopted by the Sejm).

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