Tax&Legal Highlights

Poland

Important changes in PIT since 2019

At the end of 2018, the President signed a number of acts introducing changes to the Act on personal income tax. We present the most important changes broken down by topic groups.

The vast majority of new regulations entered into force on January 1, 2019 (in some cases the date of entry into force was postponed to January 1, 2020).
Due to the difficulties of interpretation of some provisions, the Ministry of Finance plans to conduct consultations and possibly issue relevant explanations.

I. Obligations of the PIT payer

1. The new regulations provide for a one-month reduction (from the end of February to the end of January) of the deadline for preparing and submitting annual tax information (e.g. PIT-8C, PIT-11) to the tax offices. At the same time, the deadline for providing information to taxpayers remains unchanged (i.e. until the end of February of the year following the fiscal year). This information is to be submitted to offices only by means of electronic communication.

Additionally, by way of an Ordinance, the scope of income disclosed in PIT-11 and PIT-8C is subject to change.

2. A change in the calculation of tax advances will be no less important for payers. As the amendment stipulates, in the month in which the income of the taxpayer since the beginning of the fiscal year exceeded the amount constituting the upper limit of the first range of the tax scale (PLN 85,528), the tax advance should be calculated using two tax rates: 18% on a part of income below the threshold of PLN 85,528 and 32% of the excess income above this amount.

This change is essential, because until now the tax rate of 32% was applied from the month following the month in which the taxpayer's income exceeded the tax threshold, which could often result in a tax underpayment in the annual tax return. The legislator gives payers time to prepare payroll systems, because the entry into force of this change has been postponed until 2020.

II. Settlement of the PIT taxpayer

1. A new service has been introduced to provide taxpayers with tax returns by tax administration authorities.

- Tax returns are to be available on the tax portal of the Ministry of Finance (https://www.podatki.gov.pl/pit/twoj-e-pit/) from February 15 of the year following the fiscal year, based on information provided by payers and information on tax advances paid directly by taxpayers. In the first year, the service is to apply to persons who settle their taxes on the PIT-37 form (both self-settling as well as people who submit their tax returns together with their spouse or to single parents) or PIT-38.

- A taxpayer can accept the tax return without modification or after introducing modifications (correct or supplement the data, which is not available to the National Tax Administration, hereinafter NTA). An accepted return is considered submitted on the day of acceptance. As to taxpayers who did not accept the return on time, and who did not obtain any income other than those included in the return provided by NTA, there is a presumption of automatic acceptance of the return on the last day of the deadline. Taxpayers may also reject the return prepared by NTA before the deadline. Taxpayers in this situation, as well as taxpayers who do not accept such return on time can still submit a return using the traditional method, by 30 April at the latest.

2. Another **practical expedient involves the option to file joint annual tax returns** for married couples and for single parents.

- Before, married couples or single parents with a kid could file a motion for joint tax returns within the deadline applicable to the filing of the annual returns (i.e. usually by 30 April of the year following the fiscal year they pertained to).

- Under the amended regulations, the time restriction is eliminated. Therefore, **joint settlement will be possible also in the form of filing tax returns or an adjustment to tax returns after 30 April**.

3. Another practical expedient regards heirs that dispose of inherited property **in the form of private sales (i.e. not performed in the course of business activities).**

- For such individuals, the five-year period after which the disposal does not result in a tax obligation shall be counted as of the end of the calendar year in which a real property was acquired (constructed) by the testator.

- Additionally, even if the disposal of an inherited real property is subject to tax, the related tax deductible expenses include documented costs of acquisition or construction, incurred by the testator, as well as succession charges to the extent corresponding to the value of the inherited property.

4. A similar favourable effect will be exercised by the **extending from two to three years the deadline by which taxpayers may use the revenue from real property sale for own residential purposes** in order to avoid tax on real property sale.

5. **Taxation of revenue from** virtual currency sales **has been precisely regulated. Such revenue is classified as monetary capital gains.**

- Sales of virtual currencies mean exchanging them for legal currencies, goods, services or property titles other than virtual currency, or paying with virtual currencies for other obligations.

- Tax deductible expenses from virtual currency sales:

    - shall include documented expenses incurred directly for the purchase or sale of virtual currencies;

    - may be deducted in the financial year in which they are incurred, and their surplus over revenue from the sales of virtual currencies generated <u>in the financial year</u> shall increase the deductible expenses related to sales of virtual currencies incurred <u>in the subsequent fiscal year</u>.

- In general, revenue from sales of virtual currencies (the surplus of revenue over expenses) is taxable with the 19% rate and reported in annual tax returns, but cannot be combined with other types of capital income or with revenue taxed in accordance with the applicable tax rate, or those generated from business operations.

III. Exit tax

Exit tax has been introduced on income from unrealized gains. The tax is charged when:

1) **Assets are transferred abroad**, and as a result, Poland loses, in whole or in part, the title to tax on income generated from the sale of such assets, and the transferred assets do not change the owner. This case mostly relates to business operations.

2) **Tax residence status of a Polish tax resident changes** (i.e. a person obtains the status of a non-resident in Poland), and as a result, Poland loses,

in whole or in part, the title to taxation of income from sales of an asset owned by that taxpayer.

For assets not related to business operations, exit tax may be charged only if:

- The taxpayer has the residence address in Poland for **at least the total of five years during a ten-year period** preceding the tax residence change date;
- It applies to "personal assets":
    - total rights and obligations in an entity without legal personality;
    - shares in a company;
    - stock and other securities;
    - derivative financial instruments;
    - capital fund certificates.

Exit tax is applicable if the total market value of transferred assets **exceeds PLN 4 million**. In the case of marital property, the market value limit applies to jointly to both spouses.

In general, the tax base for income from unrealized gains is defined as the **surplus of the market value** of an asset determined as at the transfer date or as at the date preceding the tax residence change date **over its taxable amount**.

- Market value of personal assets is measured by reference to market prices used in the sales of assets or rights of the same kind and quality, specifically, taking into account their condition, wear and tear as well as the time and place of the disposal for a consideration.
- Taxable amount of an asset is the amount that a taxpayer would determine as tax deductible when selling the asset (formerly not classified as tax deductible amount in any form).

Exit tax rates:

- 19% of tax base, when determining the taxable amount of an asset;
- 3% of tax base, when not determining the taxable amount of an asset.

In principle, taxpayers are obliged to file separate tax returns with regard to exit tax. The filing and tax payment deadline falls on the seventh day of the month following the one in which the total value of transferred assets exceeded PLN 4 million.

The act provides for exemptions from exit tax and an option to pay the tax in instalments.

IV. Solidarity tax

On 1 January 2019 **solidarity tax** came into effect. It will amount to 4% of the calculation base, being the **surplus over the total annual income of up to PLN 1 million**, taxable:

- according to the applicable tax rate (including income taxable in countries that have not signed double-taxation avoidance treaties with Poland, or if signed, the treaty provides for the tax credit method to avoid double taxation);

- as originating from capital gains, with the 19% rate (among others, from sales of securities, derivatives, stock);

- generated from business operations and taxed on a straight-line basis;

- generated by a foreign operation or a foreign controlled entity;

reduced by:

- amounts of certain statutory social insurance premiums deducted during the fiscal year in Poland or in an EU or EEA member state, or in Switzerland;

- dividend received from a foreign controlled entity or income from sale of shares in such an entity, to the extent included in the tax base.

The solidarity tax shall be reported using a separate tax returns form for the calendar year, to be filed by 30 April of the subsequent year.

V. Changes in lump-sum income tax

Additionally, certain material changes shall be introduced in the lump-sum income tax.

- The deadline to file annual tax returns using the PIT-28 form (i.e. regarding the income charged with the lump-sum tax) has been extended: the form must be filed in the period from 15 February to the end of February in the year following the fiscal year it pertains to (previously the deadline fell on the end of January).

- The new principles apply to revenue generated after 1 January 2019, i.e. to PIT-28 forms filed by the end of February 2020.

- Unlike under prior legal regime, making a decision to select the lump-sum taxation of income generated from lease, sublease, rent, subrent and similar arrangements does not require filing an appropriate statement. Instead, a taxpayer shall simply make the first lump-sum tax payment regarding the related income in a fiscal year or file appropriate annual tax returns (if the first income taxed on a lump-sum basis is generated in December).

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Social consultation regarding JPK_VAT (SAF-T for VAT) completed

At the end of December, the Ministry of Finance published technical requirements regarding the new JPK_VAT scheme, aka JPK_VDEK statement.

Authorities will request new data types

New data types to be reported by taxpayers in the VDEK statement, in particular regarding **Termin płatności, Kod Typu Dokumentów** and **Kod Grupy Towarowej, raise doubts.**

JPK_VDEK: Term and form of payment

These are new boxes in the section *SprzedażWiersz* in JPK_VDEK form.

The box regarding the form of payment is marked as obligatory (with a select list of values), unlike the payment term box. For tax authorities, the payment term is important with regard to the tax point only in exceptional cases (e.g. when no invoice was issued within a specified deadline or when it was issued after such a deadline) and only in relation to a limited list of goods and services. As a result, in vast majority of cases, the payment term is irrelevant for tax point determination.

Therefore, introducing the new box with the payment term seems to be of little use for the Ministry of Finance, at the same time making taxpayers work harder to obtain additional information.

JPK_VDEK – Kod Grupy Towarowej (Goods Class Code)

Kod grupy towarowej in the *SprzedażWiersz* section is another important box included in the new tax scheme. Filling it is obligatory and may include just one of 19 proposed classes of goods. Unfortunately, the Ministry of Finance did not provide "*Inne*" (Other) class that could come handy when goods or services traded by a taxpayer do not fit into any of the proposed classes. Since the proposed list does not include all tradable goods and services, the solution may result in a need for taxpayers to choose "just any" code to be able to file the SAF-T form.

JPK_VDEK: other changes

A new section has been introduced with the heading *Deklaracja* (statement). In the proposed form, it is in no way related to the other sections, and no summing-up formulas are built in in relation to VAT data supplied in former sections (sale and purchase). In the current version, a taxpayer may type any figures in the section regarding the statement, even if they do not comply with the total of items included in the other sections.

JPK_VDEK: what to be expected by taxpayers

The new JPK_VDEK scheme is far from perfect, but should be improved in the course of ongoing social consultation. The question to ask is, will

the Ministry of Finance manage to publish the final version of the scheme in the first half of the year? Initial plans assumed that the new version of SAF-T should come into effect in **July 2019. The** schedule is becoming tight, bearing in mind **high sanctions** projected **for each error in the submitted JPK_VDEK file.**

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Can passenger cars fuelled with electricity, hydrogen and plug-in hybrids be exempted from the excise duty?

Pursuant to communications published by the Ministry of Finance and Ministry of Energy on their websites, on 18 December 2018 the European Commission provided the Polish side with its opinion, according to which the provisions of the Act on Electromobility and Alternative Fuels of 11 January 2018 (the "Electromobility Act") introducing excise exemption for electric, hydrogen-fuelled and hybrid plug-in cars are not classified as public aid.

What is it all about?

The Electromobility Act allows excise exemption for passenger cars fuelled with electricity, hydrogen and, until 1 January 2021, plug-in hybrids (the "Exemption").

However, the Exemption can be applied only if the European Commission classifies it as acceptable public aid, and then issues a favourable decision, or when the EC states it does not constitute public aid.

Based on communications published on the website of the Ministry of Finance and Ministry of Energy, the European Commission has decided that

the Exemption included in the Electromobility Act does not constitute public aid and presented in to the Polish side in the form of an official letter on 18 December 2018. Further, a communication published on the website of the Ministry of Finance indicates that the Exemption may be applied as early as to events with the tax point on 19 December 2018.

Nevertheless, certain doubts may arise in relation to the interpretation of the Electromobility Act, which makes the application of the Exemption dependent on the EC consent and on the manner of informing public opinion about the Commission's decision.

What does this mean?

The presentation of the EC decision provided to the Polish side may affect the date as of which the Exemption may be applied in practice, since pursuant to the provisions of the Electromobility Act, the Exemption may be applied "*as of the date of publishing a favourable decision of the European Commission regarding the compliance of the public aid provided for with the common market, or its statement that the provisions do not classify as public aid*". The European Commission has not published any formal statement regarding the issue. Further, the official letter informing the Polish side about the decision has not been formally published yet.

So, may the Exemption be applied as of the date of EC's statement that it is not classified as public aid, or should we wait until the information is officially published by competent public administration bodies? Although the communication issued by the Editor's Office of the Excise Department in the Ministry of Finance indicates that the Exemption may be applied if the tax point occurred after the date of EC's decision, i.e. as of 19 December 2018, the communication alone is not a binding regulation.

What next?

Bearing in mind the doubts regarding the applicability of the Exemption, the interested entities should thoroughly analyse the current status of appropriate regulations.

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Mass inspection of Standard Audit Files for Tax. Analytical tools used by tax authorities to inspect SAF-T

Based on a report prepared by the Supreme Audit Office (NIK), SAF-T submitted by businesses in the period form January to September 2018 provided the Ministry with information regarding over 4 billion invoices. Following an automated analysis of the files, the Ministry

picked up 194,000 suspicious invoices that will be subject to further explanation. These invoices were issued by 73,000 entities and total PLN 378 million. Since the SAF-T effective date, National Tax Administration Bodies have analysed 10 billion invoices issued by businesses operating in Poland.

Analytical tools used by tax authorities to inspect SAF-T

Please note that tax authorities carry out independent verification of a growing number of SAF-T, mostly as a result of extensive training provided to tax office employees with regard to the use of data included in SAF-T for the purposes of inspection and direct access to applications provided by the Ministry of Finance that enable viewing SAF-T in the central IT system.

Still, **Analizator JPK** remains the most popular tool used by tax authorities to check these files. Analizator JPK is a system allowing automated data analysis and generating reports on non-compliance between SAF-T and tax returns filed by taxpayers and their counterparties. When using Analizator JPK, reports are generated automatically and sent via e-mail to tax office for additional verification. At the same time, taxpayers are informed (via e-mail or SMS) about the fact and requested to adjust VAT returns or the SAF-T. Analizator JPK allows fast identification of entities that issue VAT invoices without registration, thus disallowing understatement of tax liability or overstatement of refund based on such invoices. At the same time, a taxpayer is allowed to adjust appropriate VAT settlements. Since the obligation to submit JPK_VAT (SAF-T) applies to all entities, Analizator JPK practically disallows the use of invoices that document fictitious transactions for trade or tax fraud purposes.

WRO-System is a tool enabling in-depth analysis of SAF-T. It allows direct access to SAF-T submitted by taxpayers. The role of the application has been growing. Over time, it may become the key IT tool efficiently supporting tax inspection and indicating entities that should undergo such procedure. The scale of the system use can be illustrated by the First Tax Office in Poznań, where 60 persons were trained in the system operation at the end of 2017, provided the user status and granted direct access to the central SAF-T database. Countrywide, the WRO-System is used by some 23,000 employees of the finance administration.

Further, tax authorities can access a similar application called **Lunetka**. It allows search, view and download of a source JPK_VAT file. In mid-2018 the application was used by over 2,800 clerks, who downloaded over 265,000 files.

Obviously, tax authorities use other available forms of inspection for in-depth analyses purpose. For example, selected counterparties undergo joint check performed in cooperation with the Czech Tax Administration. Such checks often disclose fraudulent transactions.

What can be checked using SAF-T

Tax authorities use SAF-T to check the correctness of tax returns (for example, to verify whether VAT returns comply with SAF-T in terms of amounts per item). Further, SAF-T is the key tool used for VAT refund purposes, as it allows verification of counterparty’s tax identification number (NIP) and thus of its status as a VAT payer. Checking other data, such as counterparty’s name and address, clerks are able to determine whether a tax

inspection performed indicated a fraud in excess of PLN 100,000 and whether the provided address indicates an actual business or a virtual office. Other information provided by these files and used for counterparty analysis purposes includes non-existent, unreliable or suspicious entities, "vanishing taxpayers" and those suspected of fraud in intra-Community transactions or deleted from VAT register. Further, the correctness of cost invoices deducted is checked and whether anything is double-counted.

Bearing in mind the current SAF-T verification capabilities, no wonder that as a result of inspections carried out by tax authorities, taxpayers filed over 2 million adjustments to SAF-T in 2018. In the same period, the Ministry of Finance sent some 400,000 communications to taxpayers with regard to discrepancies and adjustment opportunities via e-mail, SMS or traditional letters. IT tools used at present facilitate key analyses or checks. Their results underlie decision-making regarding follow-up to verify the rightfulness of VAT refund. In such cases, a refund refusal is based on a decision supported by the outcome of tax proceedings performed.

Extended forms of SAF-T verification

Official announcements published by the Supreme Audit Office indicate that the Ministry of Finance has not built any centralized tool allowing controllers access to SAF-T per request (JPK_FA, JPK_MAG, JPK_KR, JPK_WB). Nevertheless, in August 2018 the Ministry commissioned the construction of a SAF-T gate for non-VAT schemes and of a system allowing the controllers access to these SAF-T per request. At present, the gate supports only JPK_VAT files, thus making tax inspectors use files provided by taxpayers on digital carriers, such as CD or pendrive, when inspecting other tax structures. Introducing gates for the other structures would obviously accelerate the development of analytical tools that allow generation of cross-structural verification reports.

Despite the absence of a central verification tool, the first cross-structural inspections of SAF-T have already been performed (for example, when analysing JPK_FA structure, inspectors were able to detect gaps in the JPK_MAG structure). Most probably, structural inspection per request is based on audit tools provided by external suppliers. They allow relatively fast (compared to the traditional source material verification method) assessment of the correctness of settlement, check of invoice numbers for recurrence and comparing sales to purchases. Further, such software allows preparing statistics based on any criteria and selecting documents for cross-inspection on a random basis. Despite its obvious usefulness, the software is merely a tool supporting the work of clerks. Knowledge, experience and skills of the controllers are the key factors that matter for in-depth analysis quality.

At present, tax authorities can cross-check such files as JPK_VAT, JPK_FA and JPK_MAG obtained from one business. For the Ministry of Finance, cross-reference between the information provided by a taxpayer and that supplied by its counterparty will be of crucial importance. Possible tests include cross-checks of data within individual SAF-T structures, including the comparison of invoice receipt dates recorded under the VAT structure with the invoice recognition dates recorded under the VAT purchase/sales structure.

The Ministry of Finance announced the introduction of SAF-T Repository, whose role would involve automated assessment of the risk concerning

a taxpayer and its counterparties, identification of taxpayer's debts for enforcement or security purposes.

SAF-T: advantages for taxpayers

Importantly, a growing business trend involves using data collected under SAF-T structures for corporate analysis purposes. Even now, when using commercial tools, taxpayers are able to evaluate the correctness of tax settlements prior to sending their SAF-T files and tax returns. Certainly, mass verification of the counterparty status using tax identification number (NIP) is the key service of the sort, as it allows input VAT deduction if a counterparty is not registered as a VAT payer. Further, such verification limits the risk that a tax office may question taxpayer's settlements since, when verifying counterparty's NIP, taxpayers comply with due care requirements set by tax authorities. All these activities are aimed at verification of the data correctness prior to the check performed by tax authorities.

SAF-T is not limited to VAT, though. The other structures may also provide taxpayers with valuable insight. The comparing of information included in JPK_FA or JPK_MAG allows precise verification of the correctness of JPK_VAT thanks to the use of data that cannot be found in JPK_VAT. For example, we may check the correctness of recognizing of "reverse charge" invoices or adjusting invoice recognition dates.

Comparing information derived from SAF-T provides information regarding business condition. The data allow assessment of taxpayer's financial standing, scale of business operations, identification of key counterparties and the nature of transactions concluded with them, as well as identification of transactions of special interest for tax authorities. Well-prepared JPK_FA, JPK_MAG, JPK_WB and JPK_VAT files should tell a consistent goods flow story beginning from the purchase document and payment, PZ (receipt of goods) document, MM/RW (inventory movement and internal release) all the way through WZ (release of goods) and sales invoice. Appropriate business events that give rise to the tax point should be reflected in JPK_VAT file.

Taxpayers can use the above information to analyse the standing of their business and to build its image. In future, parties may exchange SAF-T files prior to concluding a material contract in order to confirm their reliability. If appropriately presented, such data may be useful for business managers, in particular when making important business decisions. Although enterprises have a number of tools in place to refer to in the decision-making process, given the large number of IT systems, SAF-T may turn out to be the one containing consistent and reliable information referring to all these systems. Thus, its value for a business is much more than just ensuring correct tax settlement.

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50% tax deductible expenses and copyright transfer

The recent draft ruling clarifies a number of doubts and gives rise to new ones, regarding employment contracts that include copyright transfer clauses.

On 3 January 2019, on its website, the Ministry of Finance published a draft ruling regarding the application of 50% rate of tax deductible expenses to the portion of salary obtained under an employment contract in relation to copyright ownership.

What is the purpose of the ruling?

Such rulings are issued by the Minister of Finance pursuant to Article 14a.1 of the Tax Ordinance

in order to ensure unified application of its regulations. The discussed draft states that its purpose is to describe terms that allow an employer (income tax payer) to apply the 50% rate of tax deductible expenses to revenue classified as author's fee, i.e. the portion payable to individuals working under employment contracts as a fee for the transferring copyright to their products to their employers.

Employer's expectations

The ruling regarding the discussed issue had been long awaited by employers, in particular those from the IT sector, where calculating the 50% deductible expenses on a portion of programmer's salary has been a well-grounded market practice.

The last two years have been relatively stormy for employers using such solutions. In this period, significant legislation changes were introduced (as of 1 January 2018, the PIT Act restricted the application of 50% deductible expenses to works produced as a result of activities listed in the Act). Further, regardless of the legal amendments, tax authorities substantially modified their approach to such payroll structures, which resulted in issuing a number of inconsistent but adverse rulings.

The general ruling was to clarify doubts and allow safe, unified application of the 50% deductible expenses to a portion of payroll for employers whose business operations qualify as a type of creative works listed in the PIT Act, such as development of computer software.

Draft ruling: doubts regarding copyright and acceptable employment contract provisions

The draft ruling published by the Ministry of Finance responds to a number of practical issues raised by employers, but does not clarify all doubts regarding copyright. Guidelines regarding the wording of employment contract provisions, as included in the draft ruling, seem not to include all the provisions of the Act on Copyright and Related Rights.

Pursuant to Article 22.9.3 of the PIT Act, disposal of the copyright to works for a fee, as addressed by separate regulations, is one of the conditions allowing the application of 50% deductible expenses. For works created by employees, the separate regulations referred to above include Articles 12, 13 and 74.3 of the Act on Copyright and Related Rights (henceforth: Copyright Law). The draft ruling points out that the disposal, performed in accordance with the Copyright Law, is the prerequisite to apply the 50% deductible costs. The regulation referred to above, though, does not include additional requirements regarding the type of copyright disposal. Therefore, basically any case of transferring copyright from an employee to an employer, performed in line with the Copyright Law, should satisfy the condition of *"disposal"*.

When read thoroughly, though, the draft ruling may lead to a conclusion that the specific guidance regarding the transfer of copyright by employees is presented in a simplified manner. Thus, doubts may arise regarding restriction of the copyright disposal options in employment contracts vs. those allowed by the Copyright Law. Please note that the purpose of the ruling is to assist employers as a practical expedient, also with regard to the wording of employment contracts desirable from the 50% deductible costs perspective. Any restrictions introduced thereto should therefore be justified by both fiscal and copyright regulations.

The Copyright Law provides, though, a number of options regarding the manner of transferring to employers the copyright to works created by employees:

- The transfer may be performed directly based on Article 12 of the Copyright Law.
    - Application of the regulation results in transferring to an employer the economic rights to works created in the course of service to the extent resulting from the purpose of an employment contract and the common intention of the parties.
    - Principally, therefore, the transfer takes place once the employer accepts the works. Therefore, the acceptance, direct or implied, of the works is required (according to the provision, an employer is assumed to have analysed the works and performed any, be it minimum, activity).
    - In this case, introduction of provisions regarding the transfer itself to an employment contract is not required, since the transfer takes place directly under Article 12 of the Copyright Law (other issues, such as the fee for the transfer, must be regulated in an employment contract to allow the application of 50% deductible expenses).

- There is an option to introduced partially or totally different contractual arrangements.
  - Being a dispositive norm, Article 12 of the Copyright Law leaves the parties to an employment contract substantial freedom of deciding on the manner of copyright transfer to an employer.
  - Copyright experts agree that such a contract may include any element arising from Article 12 of the Copyright Law, i.e. regarding the statutory transfer of the title.
  - The parties may, therefore, extend or reduce the scope of transferred rights, or as commonly practised, change the moment and manner of the transfer. In particular, employers often resign from accepting the works, obtaining the title to them upon their origination, record, provision, etc. Such solutions are safer as they reduce the risk of gaps in the obtained rights, allow easier and clearer definition of the title obtaining date, etc.
- Acquiring economic rights to works created by employees in the form of computer software is a separate issue. It is governed by Article 74.3 of the Copyright Law, pursuant to which the employer does not acquire rights to such software from the employee, but obtains them by definition (i.e. from the origination, it is the owner of any copyright to the software developed by the employee under a contract of service). Also in this case, the copyright provides substantial freedom to modify the contract.
  - By means of employment contract provisions, therefore, an employee and an employer can otherwise regulate copyright transfer principles regarding software (article 74.3 of the Copyright Act is of dispositive nature).
  - For example, the parties may agree that the principle of "automated" obtaining the title by the employer does not apply, and introduce acquisition of the title by the employee and its subsequent transfer to the employer, or choose yet another solution, such as a license.
  - Applying the copyright transfer mechanism to the software developed by an employee, an employer may change the scope of titles transferred by the employee (in particular, restrict it), or otherwise determine the transfer date (e.g. making it dependent on the acceptance of the works by the employer, recording them in employer's systems, etc.).

The draft ruling seems to ignore all these options. The Minister of Finance, determining the conditions underlying the adoption of 50% deductible costs, introduced the absolute requirement regarding acceptance of the works by an employer (including computer software in cases when the parties resign from the implied acquisition of copyright by the employer and replace it with acquiring it from the employee under the employment contract).

Although the draft ruling authors obviously did not intend to restrict options available for employers under the Copyright Law, nevertheless, under the existing guidance, employers may have justified doubts whether

resigning from copyright transfer upon acceptance of works, e.g. in favour of acquiring them upon origination of the works (as allowed by the Copyright Law) means in fact elimination of the application of 50% deductible costs. The elimination would be unjustified since the case would still include a disposal of copyrights by an employee, so the requirement itself, as presented in fiscal regulations, would be deemed fulfilled.

We can argue that as long as the required "disposal" of copyright takes place, employers may feel safe; nevertheless, many employers, and possibly tax authorities, will interpret the ruling literally.

The topic seems of special importance for IT sector employers, who by definition acquire all copyrights to software developed by employees upon their origination (determination) without the need to modify employment contract provisions. If they want to apply the 50% deductible expenses rate, they have to agree to change the principle to copyright transfer by employees. When doing this, are they forced to restrict the transfer to the titles regarding the works accepted (at least in an implied form)? Can they otherwise determine the title acquisition date in order to minimize the risk of a gap in the acquired rights, at the same time enjoying the 50% tax deductible expenses? The answer is yes, from the Copyright Law perspective, as it poses no restriction in this respect. Modification of the provisions of Article 74.3 of the Copyright Law does not mean automatic transition to general terms with a potentially restricted scope of rights, which are acquired only upon the acceptance of works. Since the Copyright Law allows a variety of options, the restrictions introduced in the form of a general ruling regarding the 50% tax deductible expenses seem unjustified, especially that fiscal law does not provide for such restrictions.

Is a change to the approach possible?

As indicated above, the document published by the Minister of Finance is a draft of a general interpretation. Social consultations were completed on 18 January. Therefore, there is a chance (and hope) that the Minister shall consider comments raised by the consulted parties and replace the obligatory acceptance of works with the required disposal of copyright as required by the PIT Act.

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Amendments to labour law in 2019

The beginning of 2019 saw a number of amendments to the labour law. Some existing solutions shall undergo material changes. New ones shall be introduced, including Employee Capital Plans. Below please find a list of the key amendments.

1. Employee Capital Plans

On 1 January 2019, the formerly announced reform of the pension system came into effect. From now on, employers shall be obliged to establish Employee Capital Plans (ECP). In the first place, effective as of 1 July 2019, the obligation shall apply to the largest corporations employing at least 250 people (not only on employment contracts). In subsequent years, the obligation shall be extended to smaller entities.

Only firms that have already introduced employee pension plans (EPP) shall be exempted from the obligation (it is too late to adopt the solution for those undergoing the obligation as of 1 July). In other cases, it is up to employees to resign from the participation in ECP. Those who take the opportunity shall be re-assigned to ECP every four years.

In the second half of 2019, employers who are obliged to introduce ECP this year must conclude ECP maintenance agreements with a selected financial institution, as well as ECP maintenance agreements regarding all their employees/contractors, pay the first premiums and process first resignations, if any. The costs of ECP premiums are divided between employers and employees. An employer shall pay 1.5% of the base salary (this is how much employment costs per employee shall grow). An employee shall pay 2% of the base salary (this is how much the net salary paid to employees shall be reduced). Beginning from 2019, the payroll costs shall increase as a result of both additional charges and increased pressure exerted by employees. Administration of ECP involves additional responsibilities (watching deadlines, enrolling new hires, recording resignations). Any offence perpetrated in the course of implementing and administering the Plan is subject to a fine of up to 1.5% of the total payroll or up to PLN 1 million, depending on the offence type. Therefore, employers should take time to get prepared for new responsibilities, for example introducing appropriate procedures.

2. Trade unions for individuals working on civil law contracts

Effective from 2019, the right to set up trade unions and become their members will also be conferred on those performing work under civil law contracts, including the self-employed (sole traders who do not hire any staff themselves). Such trade union members shall obtain rights related to activism, such as the right to a leave for the office term in the local trade union organization or for the purpose to perform a task delegated by trade unions, as well as the right to be protected from contract termination. In practice, this may reduce employment flexibility of individuals working on contracts of mandate (even of short-term nature). A refusal of continued employment with regard to such persons might be considered discrimination against trade union membership.

Additionally, those working under civil law contracts will be granted the right to initiate and enter into collective disputes with the employer on such grounds as compensation or terms of work. They will also be allowed to vote

on a strike referendum and ultimately take part in strikes themselves. Effective from 2019, information regarding the size of trade unions shall be submitted in a six-month cycle, as opposite to the existing quarterly regime.

Failure to provide such information shall deprive the unions of their rights. A procedure has also been introduced whereby the number of trade union members may be verified by the court. If, therefore, an employer is not certain whether the numbers quoted by trade unions are reliable, this option may be exercised.

Changes have also been introduced to the criteria that have to be fulfilled by a trade union to be considered representative. The list of breaches of the Trade Union Act subject to penalties has changed. Breaches committed by employers include: (i) a failure to enter into negotiations with the trade union over planned changes to the terms of employment due to the transfer of the organization (or its part) to a new employer; or (ii) a failure to deduct membership fees despite the trade union's request and the staff member's consent. On the other hand, trade union activists may be subject to a fine for: (i) using the trade union's income for non-statutory purposes or its distribution among the members; or (ii) overstating the number of trade union members.

3. Employee documentation

Effective from 2019, employers may maintain employee documentation in an electronic form. The post-employment archiving period has been reduced from 50 to 10 years. The new regulations are applicable to employees hired on 1 January 2019 or later. The reduced archiving period applies to individuals hired between 1 January 1999 and 31 December 2018 provided specific additional obligations are fulfilled.

The method of maintaining personnel files shall change as well. First of all, the files are to be divided into four sets (a separate set for issues related to employee's housekeeping responsibility).

In order to comply with the new regulations, adoption of additional procedures to be followed in respect of employee records, addressing such issues as digitization, access to documentation, back-up copy creation, storage, safeguards or control of their effectiveness may be necessary.

4. Salary payment forms

As of 1 January 2019 transfer to employee's bank account becomes the implied form of salary payment. In the past, such a solution was possible upon written consent of an employee, since the cash payment was considered the implied payment form. Individuals who have received cash should be immediately informed about the obligation to provide a bank account number or to file a request to continue the cash payment.

5. New minimum pay

In 2019, the minimum pay is PLN 2,250, i.e. by PLN 150 higher than in 2018. By default the amount shall apply to individuals whose employment contracts provide for a lower amount. Paying a lower amount shall constitute a breach of employee's rights.

The increase of the minimum pay shall affect the amounts of other employee benefits. The statutory limit of termination benefits under the Act on Collective Layoff shall increase to PLN 33,750. The night shift benefit will grow accordingly.

The minimum hourly rate payable under contracts of mandate and under service provision contracts shall grow to PLN 14.70.

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