Tax&Legal Highlights

Poland

Daily bank statements in SAF-T format. Obligation to file daily SAF-T reports on taxpayers

Starting from 1 September 2017 banks will be obliged to file daily bank statements of businesses in the SAF-T format. The new requirement does not apply to microenterprises and public finance entities. Taxpayers holding accounts with foreign banks are obliged to file daily reports independently.

The government draft amendment to the Tax Code introduces an obligation to provide the Head of the National Tax Administration with daily bank statements in the SAF-T format.

The requirement will apply to **legal persons, organizational units without legal personality and sole proprietors** within the meaning of the Act on freedom of economic activity, **excluding microenterprises and entities from the public finance sector**.

For taxpayers holding a bank account with a bank or a bank branch registered in the Republic of Poland or a credit union, SAF-T will be submitted directly by **abank or a credit union** based on a written authorization of a taxpayer. Taxpayers holding a bank account with

a **foreign bank** will have to file daily reports in the SAF-T format **independently**.

According to the amendment, bank statements **will be provided for 24-hour periods until the end of the following 24-hour period** excluding Saturdays and public holidays. The bank statements will be provided by banks and credit units through the IT system of the Polish clearing chamber (KIR S.A.). Taxpayers preparing SAF-T reports independently will send them to the dedicated gateway of the Ministry of Finance.

The new regulation is based on the structure of the SAF-T file, which should be submitted by large enterprises, as requested by tax authorities. Daily SAF-T bank statements should include the following information:

1. details of the sender and recipient of the payment (name, address, tax identification number NIP or statistical number REGON, if available);

2. account number of the sender and the recipient;

3. date and time of debiting the sender's account or date and time of a cash payment;

4. amount and currency;

5. title and description of a payment order;

6. account balance of the company after the payment - for data provided by the bank or credit union keeping the company's account;

7. details of a virtual account created to identify mass payments, if a payment order credits such an account - for data provided by a bank or credit union keeping the credited account of the company.

Planned effective date of the amendment is 1 September 2017.

Rapid reaction mechanism?

As indicated in the explanatory statement of the bill, the amendment objective is to prevent tax fraud and offence, including carousel fraud, through rapid identification of suspicious transactions and checking the revenue and expenses declared against the account throughput. Daily bank statements will enable rapid reaction of tax authorities to undesirable behaviour of taxpayers, which should protect honest taxpayers against fraudulent actions of their counterparties.

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The new principles of hiring temporary employees come into force

On 6 May 2017 the Polish President signed the amended Act on the employment of temporary workers. The amended act introduces new principles of hiring temporary employees, new obligations for temporary employment agencies, user employers and for employees.

The new law came into force on 1 June 2017. The key changes.

More stringent employment time limits for hiring temporary workers
The new regulations make time limits for hiring temporary workers more stringent and efficient. In line with the amended act, the user employer will have the right to use the work of a given temporary employee for the period not exceeding the total of 18 months in the period of 36 consecutive months, **irrespective of whether the employment has been organized by one or more temporary employment agencies.** The limit will apply to temporary employment organized by temporary employment agencies under **employment contract and other contracts entered civil law regime** (also if used interchangeably).

Consequently, new obligations have been imposed on the agency, user employer and a temporary worker. Before posting an employee, an agency will be obliged to check if the limits stipulated in the act have not been exceeded. To this end, a temporary worker will have to present an employment separation certificate and employment records (or own statements) to certify the temporary employment period with a given user employer before a contract is signed with the agency.

At the same time, a user employer will have to **keep records of all temporary employees**, including the start and end date of employment in the period of 36 consecutive months. The user employer will be obliged to keep such records in the 36 reporting period and for another 36 months after the end thereof.

Any breach of the employment limits in question shall be considered as **an offence**.

Protection of pregnant women
Contracts between temporary employment agencies and pregnant women, which would have been terminated after the third month of pregnancy, will be extended automatically until the **date of confinement**. The provision will apply to female temporary workers with at least 2-month posting period

to a given temporary assignment by a given agency under an employment contract in a 36-month reference period.

The 2-month employment period and the 36-month reference period will be calculated as from 1 June 2017 also for employment contracts concluded before the amendment entered into force, i.e. before 1 June 2017.

More precise provisions of a ban from hiring temporary workers
The amendment introduces more detailed provisions on the territorial scope of a ban from hiring temporary workers to do a job covered by group layoffs by a user employer. In line with the amended act, the restriction applies only to the municipality/district where the organizational unit which employed and subsequently dismissed a given person is located. The former regulations did not provide any detailed instructions in this respect.

The 3-month grace period has not changed.

New obligations and new sanctions
Apart from employment period limitations, temporary workers, agencies and user employers are obliged to comply with a number of new reporting and formal requirements.

The catalogue of offences under the act has been extended considerably. In particular, the employment of temporary workers for a period exceeding maximum employment limits or hiring temporary staff to carry out assignments which may not be awarded to temporary employees will be punishable. Maximum fine which can be imposed on temporary work agencies and user employers violating the act has been increased from PLN 5,000 to PLN 30,000.

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The act modifying principles of hiring temporary employees has been signed by the President. In particular:

(i) it clarifies and extends the limitations for hiring temporary employees. A company will be allowed to hire a given temporary employee for the maximum period of 18 months in a 36-month reference period, regardless whether this employee is assigned to that company by one or several temporary employment agencies and regardless whether hired based on labour law or civil law regime;

(ii) employment contracts concluded with pregnant employees that would expire after the first trimester of pregnancy will automatically be extended until the date of birth;

(iii) companies hiring temporary employees and temporary employment agencies will have numerous new formal obligations;

(iv) the catalogue of offences on the grounds of the temporary employment act has been extended;

(v) also the maximum fines that may be imposed on the grounds of this act have been increased from PLN 5,000 to PLN 30,000.

The new provisions come into force as of 1 June.

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Anti-avoidance clause: the current practices of tax authorities

The tax law avoidance clause was introduced to the Polish tax law system on 15 June 2016. Although no decision has been issued based on the clause so far, the practices of tax authorities applying its selected provisions can be analysed after twelve months since the implementation.

Examples of applying the anti-avoidance clause

One of the most typical examples of applying the anti-avoidance clause are cases where tax authorities refuse to issue a tax ruling, because they reasonably suspect that certain elements of the facts of the case or the future event indicate tax avoidance. Tax rulings were refused in cases related to effects of donations, company revaluations and contributions-in-kind. There is no official data on the number of refusals issued because the authorities had considered the possibility of applying the anti-avoidance clause. The Polish Ombudsman requested the Minister of Finance and Development to publish such information in a letter No. V.511.25.2017.EG indicating a number of doubts arising from the implementation of the clause.

First decisions of the Regional Administrative Court

First decisions of Regional Administrative Courts were also issued - most of them related to refusals to issue a tax ruling. For instance, the Regional Administrative Court confirmed that a tax ruling may concern the protective power of a tax ruling if the clause is applied. The Regional Administrative Court in Gdańsk decided that the authority issuing a tax ruling has no authority to decide if the proceedings under the clause could be carried out in a given case.

Moreover, a securing opinion on a business combination was refused on 16 December 2016 (file No. 145058/K). Although the decision in question concerned a specific transaction between specific companies, statements and arguments included in the document may indicate how tax authorities may interpret the provisions of the clause. In the refusal in question, the Minister of Finance and Development interpreted a sequence of actions of the transaction as one sequence of actions within the meaning of the clause (i.e. as one action under the clause). Still, referring to the objective of the action, the Minister divided the sequence of actions into individual steps and referred to business objectives of individual stages, not to the entire sequence. This approach may raise certain doubts in the context of the clause. Moreover, the content of the refusal may suggest

that tax authorities may focus on figures disclosed in the list of tax and non-tax benefits resulting from a given action when assessing whether a given action was carried out to derive tax benefits. Finally, arguments raised in the refusal may indicate that wherever a given action was deemed as taken solely to derive tax benefits, such action should be considered unnatural.

Alert about the possibility to apply the anti-avoidance clause

On 8 May 2017 the Ministry of Finance published on its website a "Minister's of Finance alert about tax optimization of closed-end investment funds using bonds". In accordance with the information published, it is the first of a series of documents warning that an anti-avoidance clause could be applied to certain structures. According to the alert, in certain circumstances, a structure with closed-end investment funds and bonds could potentially be considered as tax avoidance, to which the anti-avoidance clause shall apply.

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A due diligence action list will be developed for VAT purposes

The Ministry of Finance specifies what kind of non-standard circumstances of a transaction should raise doubts of a taxpayer and trigger detailed analysis of a counterparty. The Ministry is also developing a due diligence action list.

Suspicious circumstances of a transaction

According to the Ministry of Finance due diligence in counterparty checking should not be limited to obtaining a copy of registration documents certifying assignment of a statistical number (REGON), tax identification number (NIP) or other documents (such a fuel trader's licence). Circumstances of establishing and carrying out business relations should also be closely inspected. According to the Ministry of Finance non-standard circumstances of trading in given goods should raise doubts of a taxpayer. Such non-typical situations include cases where:

- an entity reporting a considerable revenue has a registered address in a place with no signs of any business activity and it has no technical resources necessary to carry out this type of business activities;

- suppliers and buyers in the supply chain often change without any economic reason (new companies are established, other businesses are re-established with a changed shareholding structure);

- a supplier does not intend to enter into a long-term business relationship;
- business facilitators indicate preferred or acceptable suppliers and buyers with no clear reason;
- considerably short payment terms, considering the transaction size;
- reversed payment chain - the last entity in the chain makes advance payments to finance the entire purchase transaction;
- low transaction margins for most companies in the chain (with low profit margin) and no price negotiations;
- fast trading, goods are not warehoused, but immediately sold to other entities.

Circumstances listed above should raise doubts as to the integrity of the counterparty. In other words, in these circumstances, a taxpayer is expected to inspect in detail if the counterparty actually exists, to check its integrity and VAT registration.

Due diligence guidelines

The Ministry of Finance decided to consider the proposition of determining a list of actions indicating a taxpayer's good faith or due diligence or guidelines in this respect, as suggested in the related interpellation. The list would instruct honest entrepreneurs what actions should be taken to avoid the risk that tax authorities may question their right to deduct tax. The Ministry of Finance is said to be developing the list in question.

On the other hand, the Ministry of Finance emphasises that even if the same goods are traded, the actual circumstances of a given transaction will decide of the good faith and due diligence of a taxpayer. If the list of obligations is made too specific, it may disregard some situations, in particular, those of a non-standard nature. Moreover, the Ministry of Finance indicates that the list could be used by dishonest buyer to fake acting in good faith.

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