



Tax&Legal Highlights

Poland

New minimum wage rate

The government has announced a new minimum wage rate which will take effect on 1 January 2018.

The government announced yesterday that the minimum wage in 2018 will be PLN **2,100**. This figure will apply to employees whose employment contracts set out a lower wage. Paying out a lower wage will be a breach of the employees' rights.

The increase in the minimum wage shall affect other employment-related benefits. The statutory limit of group layoff severance pay shall grow to PLN 31,500, and the night work allowance shall increase as well.

The minimum hourly rate paid for contracts of mandate and contracts of service shall increase to **PLN 13.40**.

The amendments come into force on **1 January 2018**. The current pay rates amount to PLN 2,000 and PLN 13, respectively.

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CETA takes effect. Businesses can use CETA and its benefits applicable to competition and commercial relations

The European Union (EU) and Canada agreed the effective date for temporary application of the Comprehensive Economic and Trade Agreement (CETA) they have concluded. As of 21 September 2017 businesses can use CETA and its benefits applicable to competition and commercial relations. The possibility to import many EU and Canadian goods at reduced tariffs is among the key benefits. Please note that certain regulations shall become effective only when CETA has been approved by all Member States.

What shall this mean for you?

Pursuant to CETA, about 98% import tariffs between EU and Canada shall be eliminated. Another 1% shall be eliminated within subsequent seven years.

EU goods imported to Canada will enjoy preferential tariff treatment under CETA. The same principle will apply to Canadian goods imported to the EU provided the preferred origin is properly documented.

In order for your business to enjoy the preferential tariff treatment as provided for by CETA, we suggest taking the following steps:

- check whether the goods traded by your company qualify for the preferential tariffs under CETA;
- determine whether these goods are of preferred origin (from the EU if imported to Canada or from Canada if imported to the EU) and whether they fulfil all origin-related requirements;
- determine the form of confirming the preferred origin and the related formalities.

The above steps shall allow businesses proactive seeking for opportunities to apply CETA on the temporary application basis; therefore your company should commence the procedure as soon as possible. Getting prepared beforehand shall allow you full use of opportunities provided by CETA beginning from day one.

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Shall Poland become a Super-Special Economic Zone? New business support principles presented by the government.

After over twenty years of operation, special economic zones (SEZ) are going to be reformed by Polish government. Mateusz Morawiecki, Deputy Prime Minister, Minister of Development and Finance, accompanied by Grażyna Ciużyńska, Director, Investment Policy Department in the Ministry of Development, presented the proposal of the new support measures at Economic Forum in Krynica.

Poland: Investment Zone

In the proposed bill, Poland is presented as an investee offering tax incentives on its entire territory, without the need to extend special economic zones. By doing so, the government wants to eliminate the long and onerous procedures of SEZ border modification, thus activating the investment potential of the entire country, which, in politicians' opinion, is of special importance in case of large investments.

Tax exemptions: both quantity and quality will matter

Like in the current SEZ, the tax exemption system shall be available for new investments that meet the definition presented in EC Regulation 651/2014, which includes the construction of new plants. In case of projects involving extension of existing facilities, investors will have to prove that its purpose is to increase the existing production capacity or to fulfil restrictive criteria in the case of diversification or modification of the manufacturing process.

Additionally, the project will have to meet certain quantity and quality criteria (i.e. reach a certain investment value level and comply with the Responsible Development Strategy, RDS) . According to the Ministry, investments that translate into increased economic growth of the country and a given region, among others through know-how transfer and providing good employment conditions, shall be preferred. No requirement to locate **such projects within the existing SEZ will be an additional advantage.**

An investment project can win the maximum score of 10 for its quality, including RDS assumption in the following aspects:

1. Structural development measured based on employment of specialized staff or the offering of highly-paid jobs; investment compliance with the current policy regarding national development and export of products or services;
2. Scientific development measured based on cooperation with research and academic institutions, R&D activities and operation of sectoral clusters;
3. Sustainable development measured based on investment location (e.g. in places with high unemployment rate); additional score for supporting SME and small/medium sized rural communities and towns;
4. Human resources development measured with additional employee benefits offered, e.g. employee care, educational programs.

The quality criteria shall be considered met if an initiative has won 60% of the total score, i.e. 6 of 10. The quality related requirements shall decrease along with a growth of public aid available in Poland: **50%** for areas with 35% public aid intensity and **40%** for areas with 50% public aid intensity.

The quantity criterion will depend on the unemployment rate in the county where a given investment is located and on the business size. Large businesses, investing in counties whose unemployment rate is lower than the

national average, must invest at least PLN 100 million to receive the support. The minimum investment value for large businesses, when located in counties whose average unemployment rate exceeds 250% of the national average will be PLN 10 million. As pointed out by Director Ciużyńska, criteria regarding SME shall be reduced to 98%, i.e. minimum investment level in SME shall be PLN 2 million in counties whose average unemployment rate is below the national average and PLN 200,000 in counties whose unemployment rate exceeds 250% of the national average. The current minimum investment value in SEZ has been EUR 100,000. Thus, it will grow five times in counties with low unemployment rates.

How long will the allowance be available?

The new model will not indicate a single effective date for tax allowances. The tax allowance period shall be set for each investment individually and shall last ten years, being extended to 12 years for investments located in places with public aid intensity of 35% and to 15 years for those located in places with public aid intensity of 50%. The period shall be extended by five more years for investments located within the current special economic zones.

What will happen to SEZ and their investors?

For permits and decisions issued pursuant to the Act on Special Economic Zones of 20 October 1994, the provisions of the Act shall remain binding until the end of 2026. Beginning from the effective date of the Act on New Investment Support Principles (the discussed bill), only the new support forms shall be available for new investors, in parallel to the existing SEZ, and it shall supersede them over time.

When will the new regulations be presented to the public?

On 14 September 2017, Deputy Minister of Development Jadwiga Emilewicz presented information regarding execution of the Act on Special Economic Zones as at 31 December 2016 before the Parliament. She informed that the governmental bill regulating SEZ should be sent for consultation to other ministries on 27 September 2017.

Are there any surprises awaiting investors in new "special economic zones"?

During the parliamentary discussion, Jadwiga Emilewicz admitted that when working on the bill, the Ministry of Development had analyzed models adopted in other countries and considered "combination of the Czech and Slovak model" the most appropriate. Czech investors are exempted from CIT for ten years. The allowance is available for greenfield and brownfield investments, in case of the former the entire income from the new investment being exempted. In case of the latter, the exemption includes income from the new investment calculated as the difference between post-investment income and pre-investment income (a three-year average). Therefore, the new model can be expected to introduce a limited scope of tax allowance for brownfield investments, which is not applied in the existing SEZ. If such a limitation is implemented, we can expect something similar to the situation seen in the first half of 2014, when many investors rushed to get new permits allowing a bigger tax allowance.

When analyzing the new criteria presented by the Ministry, we also wonder whether BPO investments, so far frequently using the support offered in SEZ, providing a large number of high-value jobs with relatively small outlays, shall be able to fulfil the requirements of the new support system.

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Transportation package: extending the range of goods subject to the monitoring obligation

On 22 September 2017 the Ordinance on goods whose freight is subject to the monitoring obligation issued by the Minister of Development and Finance (henceforth: the "Ordinance") shall take effect.

Its provisions extend the range of goods subject to this obligation pursuant to the Act on the road transport monitoring system of 9 March 2017 (Journal of Laws item 708, henceforth: the "freight package") among others to vegetable oils and animal fats classified in selected CN and Polish Classification of Goods and Services (PKWiU) categories.

Extending the range of goods subject to the monitoring obligation

The Ordinance extends the range of goods that must be monitored in gross amounts exceeding 500 kg or 500 l among others to:

- soybean oil;
- peanut oil;
- coconut oil;
- palm oil;
- sunflower seed oil;
- olive oil;
- rapeseed, agrimonia and mustard oil

both raw and refined, as well as to vegetable and animal oils and fats, their fractions that have undergone hydrogenation and esterification without further processing and maize oil.

The detailed list of goods subject to the new obligations results from Polish Classification of Goods and Services (PKWiU) and Combined Nomenclature (CN) codes. These goods are included in the following PKWiU sub-categories: 10.41.21 to 10.41.29, 10.41.51 to 10.41.60 and 10.62.14, and are assigned CN codes from 1507 to 1516 and 1517. Further, solid and liquid margarines have been explicitly exempted from the monitoring obligation.

Exceptions

Goods are not subject to the monitoring obligation in the following cases: (i) when transported by postal operators in postal packages; (ii) if subject to customs procedures including transit, storage, temporary customs clearance, processing, export or re-export; (iii) freight of vegetable oils to be used as heating or engine fuel under the excise suspension procedure; (iv) transported in unit packages up to 26 kg/26 l.

Status of other planned amendments

Apart from the above ordinance, the Ministry of Finance has been working on other amendments to provisions on monitoring transport of goods. Works regarding extension of the monitoring obligation to rail transport and on GPS trackers are pending; the bill regarding the latter was submitted to the European Commission for notification on 8 August.

Follow-up

As the effective date of the Ordinance is nearing, we suggest checking goods traded by your business (especially if you operate in the food industry) for applicability of the new regulations. If they affect your business, necessary preparatory measures should be commenced, including training your personnel on submission of SENT notifications, developing internal notification submission and confirmation procedures, and possibly amending concluded contracts to determine liability for possible losses arising from your counterparty's failure to submit a SENT notification or from submitting it in an incorrect manner.

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Publication of the implementing regulation concerning specific information disclosed in transfer pricing documentation

New provisions on documenting intercompany transactions (new provisions of the Corporate Income Tax Act and Personal Income Tax Act) became effective on 1 January 2017.

In accordance with the new provisions of the acts, taxpayers in Poland shall accept a three-tiered approach to the documentation of intercompany transactions, consisting of a Local File, Master File and Country-By-Country Reporting. Besides, tax documentation must include benchmark studies showing the market prices / terms of settlement in intercompany transactions.

However, the scope and need to prepare a tier of documentation are dependent on the volume of revenues / costs generated by a taxpayer. Therefore, this obligation shall not apply to small units with revenues / costs of less than EUR 2 million. On the other hand, the obligation imposed upon other taxpayers shall increase in line with their revenues / costs.

The documents are available under the following links:

Regulation ([link](#))

Final version of the regulation

On 18 September 2017, the long-anticipated final version of the implementing regulation on CIT information (and PIT information) to be disclosed in tax documentation was published in the Journal of Laws.

This Regulation will become effective after 14 days of its publication.

Scope of the regulation

The regulation in question is a delegation that lays down specific elements making up tax documentation in accordance with Article 9a.2b and Article 9b.2d of the CIT Act.

The regulation imposes broader information obligations upon a taxpayer, connected with intercompany transactions, including justification for prices in intercompany settlements.

The aforesaid implementing regulation provides for the elements of:

- a Local File,
- a Master File,
- a benchmark study.

I. The Local File

As regards the Local File, the regulation specifies in particular:

- A. Cash flow details – the documentation is to disclose information on the amount of transaction / other event resulting from invoices issued / received (or amounts resulting from agreements) and amounts of payments received and made;
- B. Identification particulars of related parties (the documentation should present names, contact details, tax identification numbers and the type of relationship);
- C. Description of the course of transaction / other event (the documentation is to present a detailed functional analysis and indicate the functional profile of the entity).

II. The benchmark study

As regards the benchmark study, the regulation specifies information that shall be included in the study, i.e.:

Explanatory statement to the regulation

- A. Indication of the tested party / parties to the transaction (and the reason for selecting the tested party);
- B. Selection of assumptions for the study (and justification for such assumptions), including: (i) qualities of tested goods, services or other benefits, (ii) course of the transaction / other event, (iii) terms of comparable transactions / other events, (iv) selection of a comparable geographical area and (v) the business strategy applied;
- C. Justification for a one-year / multiple-year data study;
- D. Indication of financial data / indices used in the benchmark study;
- E. Information on adjustments made to eliminate differences between the tested transaction / event and comparative data (and justification for such adjustments);
- F. Determination of the market price / range;
- G. Reasons for failure to provide information under items B-F (where it is not necessary to use such information in the study).

III. The Master File

As regards the Master File, the regulation specifies in particular:

- A. Information on the organizational structure of the group (the documentation should specify, among others, the name, registered office and description of relations);

"As regards the benchmark study, the regulation shall be read in conjunction with Article 9a.2c of the CIT Act, which provides that the benchmark study shall include comparable data on entities based or managed in the territory of the Republic of Poland, if the taxpayer has access to such data".

Explanatory statement to the regulation

- B. The pricing policy (the group documentation should present the pricing policy for services, intangibles and R&D deliverables, financing of intercompany operations);
- C. The business and activities of the group, including information on (i) business factors that affect profits, (ii) major added value chains and functional profiles of related parties in such a chain, (iii) services provided under such added value chains, (iv) geographic markets which generate at least 10% of profits in individual added value chains, (v) business restructurings, mergers, acquisitions and disinvestments made during a year;
- D. Description of significant intangible assets of the group, including: (i) the strategy of developing, enhancing, maintaining, protecting and exploiting intangible assets, (ii) major R&D centers in the group (based on number of FTEs), (iii) entities that manage R&D operations, (iv) the list of group's intangible assets that affect intercompany transaction pricing and the holders of title to such assets, (v) intercompany R&D contracts / agreements and license agreements, (vi) information on a change in holders of titles to / managers of group's intangible assets;
- E. The group's financial standing, including a list of borrowings (equivalent to over 5% of group's borrowings).

Definitions

An additional element introduced to the final version of the regulation is a glossary that defines six key terms. i.e.:

- (1) party to a transaction or other event,
- (2) functional analysis,
- (3) value added chain,
- (4) significant value added chain,
- (5) functional profile,
- (6) qualities of goods, services or other benefits.

Changes to the draft regulation

The text of the regulation was changed mainly as a result of comments received in the course of public consultations on the draft regulation. Most of those changes clarified selected issues and to some extent limited an administrative burden imposed upon a taxpayer (e.g. provisions that required to compare changes in the course of transactions against the previous year were withdrawn).

Commentary

The implementing regulation on information included in tax documentation presents an extensive list of detailed elements of the documentation.

The regulation provides that the elements of tax documentation will have to present detailed information on the business of a taxpayer and the group it is a member of. In order to satisfy the requirements imposed upon by the legislation, the elements of a benchmarking analysis to justify the prices applied will also require a significant labor input.

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