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# Report on payment deadlines in commercial transactions

A few years ago, a new requirement was imposed on Polish taxpayers to prepare reports on the payment deadlines applied in commercial transactions, also known as payment backlog reporting obligation.

In January 2020, Article 13a was added to the Act of 8 March 2013 on **counteracting excessive payment delays in commercial transactions** ("Payment Backlog Act"). It puts executive officers of certain entities under an obligation to report on payment deadlines applied in commercial transactions during the previous calendar year. Initially the reporting obligation was defined broadly and applied to entities indicated in Article 27b.2 of the CIT Act, i.e. tax capital groups, entities with annual revenues over EUR 50 million and real estate companies (including those belonging to tax capital groups) regardless of their revenues. This caused quite a stir in the market, especially in the context of small companies possessing small real properties and with relatively low revenues. Some experts even argued that such small entities were put under the obligation to report payment backlogs by accident. Perhaps there was some truth in these speculations, because later legislators amended Article 13a of the Act and narrowed down the list

of reporting entities.

## Who is obliged to report?

This year, the following tax payers other than tax capital groups are obliged to report on **payment deadlines applied in commercial transactions** during the previous calendar year:

- tax payers whose revenues (obtained in FY ended in the calendar year preceding the year of individual taxpayer's data publication) exceeded the PLN equivalent of EUR 50 million converted at the NBP exchange rate from the last business day preceding the year of the public announcement of individual taxpayer data, and
- tax payers included in the list published by the Minister of Finance by 30 September of the year for which the report is submitted.

**Hence it should be noted that verifying whether the thresholds specified in the Act** have been exceeded or not

is not enough – one also needs to check the Public Information Bulletin to make sure that the entity is on the list drawn up by the minister competent for public finances. According to the interpretations available, an entity that, despite meeting the revenue criteria, is not included in the above-mentioned list (published by the date specified above), will not be obliged to prepare the report.

## Who is responsible for reporting?

Executive officers, i.e. members of the management board or any other management body, persons performing the functions of the management body or, if the entity does not have any structure of that kind, persons managing the activities of the given entity are **responsible for timely submission of the report**.

The Minister of Development and Technology publishes a summary **list of all filed reports** in the Public Information Bulletin and forwards

the reports to the President of the Office of Competition and Consumers Protection (UOKiK). UOKiK is also informed which entities did not report the data on time. The President of UOKiK may use this information when analysing the probability of excessive delays in cash transfers.

Failure to submit the report within the prescribed deadline is considered an infraction and may result in a fine. It needs to be pointed out that all members of the management body are **held liable for non-fulfilment of the reporting duty**. Conversely, when the payment backlog report is submitted by one or more persons (depending on the rules of representation adopted), this fact relieves all others of the liability, regardless of whether they were involved in the process or not.

#### How and when to report?

The report should be filed electronically by **30th April of the following year**. If it is submitted by a holder of the power of attorney, the appropriate authorization must be attached to the report (the regulations do not impose specific requirements as to the form of the authorization document). If a commercial proxy files the report, the relevant excerpt from the National Court Register confirming the establishment of the proxy should be enclosed. In both situations the stamp duty needs to be paid and the

receipt should also be attached to the report.

Reports on payment deadlines should be filed using the dedicated form available from: [www.biznes.gov.pl](http://www.biznes.gov.pl). Filing is free of charge (except for the stamp duty requirement). Importantly, the reporting duty concerns calendar years, so **the date of submission and the period covered by the reporting obligation** do not depend on the financial year adopted by the entity. In consequence, ensuring data completeness in companies whose financial year does not correspond to the calendar year may involve additional workload.

#### What to include in the report?

In accordance with the requirements laid down by the Payment Backlog Act, the taxpayer is obliged to report the following data:

- company name and tax identification number;
- value of cash transfers:
  - received in the previous calendar year within the deadline specified in the contract;
  - paid in the previous calendar year within the deadline specified in the contract;
  - not received in the previous calendar year within the deadline specified in the contract, if the deadline was exceeded by no more than 5 days,

6 to 30 days, 31 to 60 days, 61 to 120 days, more than 120 days;

- not paid in the previous calendar year within the deadline specified in the contract, if the deadline was exceeded by no more than 5 days, 6 to 30 days, 31 to 60 days, 61 to 120 days, more than 120 days;
- percentage share of cash transfers not received in the previous calendar year within the contractual deadline (within the specified timeframes) in the total value of cash transfers receivable by the entity in the previous calendar year;
- percentage share of cash transfers not paid in the previous calendar year within the contractual deadline (within the specified timeframes) in the total value of cash transfers payable by the entity in the previous calendar year.

The report does not cover cash transfers based on commercial transactions in insurance and reinsurance, cash transfers based on commercial transactions concluded only by entities belonging to the same capital group, and cash transfers whose limitation period has expired.

As per the guidelines provided in the publication "Reports on the payment deadlines applied in commercial transactions. Practical Guide" ("Guide") available on the website of the Ministry of Development and Technology, the value of cash transfers in foreign currency should be translated into PLN in accordance with

the accounting principles adopted by the entity.

Before 30 September 2023 (when the Minister of Finance is due to publish the list of reporting entities), **companies that may be subject to the reporting obligation should analyse their systems and settings** to determine whether efficient generation of data needed to prepare a payment backlog report is possible. It may also prove useful to check in advance which transactions should be reported and whether the company is not exposed to the negative consequences of payment delays – if the financial situation allows it. Our practical experience shows that preparing data for reporting purposes often turns out to be time-consuming and complex, because many doubts arise when qualifying cash transfers as eligible for

reporting or not. Despite the exclusions contained in the Financial Backlog Act, taxpayers still tend to interpret them in different ways. This is only one of many reasons why leaving the matter for the last minute is not advisable.

If you need assistance in identifying transactions that will fall under reporting requirements or in fulfilling the reporting obligations, our multidisciplinary team is ready to offer solutions. **We have extensive experience** linked with the practical aspects of applying the provisions of the Payment Backlog Act, also in relation to the obligation to submit a report on payment deadlines in commercial transactions.

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# Minimum tax on buildings does not apply to hotels

On 4 July 2023, the Supreme Administrative Court (NSA) ruled (reference No. II FSK 71/21) that a hotel service is not a service similar in nature to a lease or rental agreement, and therefore hotel owners should not be subject to the minimum tax on buildings.

**In line with the CIT Act, the so-called minimum tax on buildings is imposed on buildings** that have been leased for use in whole or in part under a lease, rental or a contract of a similar nature. In practice the minimum tax is chargeable on office buildings, shopping centres, warehouse etc. The tax base is the sum of the initial value of the properties decreased by PLN 10,000,000, and the tax is payable at a rate of 0.035%.

The Supreme Administrative Court disagreed with the practice of tax authorities and courts to date by pointing out that **hotel services are not equivalent to rent or lease**, and they do not constitute “contracts of a similar

nature” either, because a hotel contract is a named contract. NSA argues that the applicability of the minimum tax cannot be extended to include such contracts, since the provisions of the CIT Act do not explicitly refer to them.

Unfortunately, despite the judgment, **it seems that the tax authorities still hold a different opinion and consistently aim to impose the minimum tax on buildings on hotel owners.** We hope that the judgment will initiate a more favourable approach to this issue and that its conclusions will be applied more widely, e.g. to student housing and PRS buildings.

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# 14th Edition of **REal Knowledge Newsletter**



# Digitisation of investment and construction process

The Polish Construction Law has been amended already seven times this year alone, however, the key change proposed in recent years concerns the digitisation of the construction process.

The efforts to introduce digital facilitation to the investment and construction process have been continuing for a few years now. They were designed to make the process less burdensome for the investors, architectural and construction authorities as well as building supervision bodies. Additionally, to improve the entire procedure. What changes have already been made and what can we expect in 2023?

## Timelines of changes

### The first stage of digitisation of the investment and construction process began in Poland

in February 2021. This significant step enabled to submit certain applications, notifications, and declarations online via the e-Construction portal ([e-Budownictwo](#)), administered by the General Office of Building Control (*Główny Urząd Nadzoru Budowlanego - GUNB*). In July 2021, more functionalities were added to it. Furthermore, from 10 August 2022, the operation of the e-Construction portal has been regulated in the new Chapter 7a of the Construction Law (Articles 79a-79k). on 1 August 2022, the law on the Central Register of Building Licences (e-CRUB system) came into force, followed on 1 and 27 January 2023 by the law introducing the Work Digital Logbook (c-KOB system) and the Electronic Construction Logbook (EDB system), replacing the previous paper-based documents.

However, the digitisation process did not end with it. Another major amendment of the construction law is already in the making. It includes the acceleration of

the changes already proposed and full digitisation of investment and construction process. The new regulations provide for, among others, the creation of a Database of Building Permit Designs (*Baza Projektów Budowlanych*) and Administrative Proceedings System in Construction Sector (*System do Obsługi Postępowañ Administracyjnych w Budownictwie - SOPAB*).

The digitisation of the construction process will make the things significantly easier for engineers, architects, and investors. The option to electronically submit the necessary documents for the construction process will certainly speed up and streamline the entire process. It will also save time of citizens and investors alike. In addition, reducing the use of paper construction documentation will simply the work of architectural and construction authorities.

### So what exactly have these changes and amendments introduced?

#### I. Central Digital Register of Building Licences (Elektroniczny Centralny Rejestr Uprawnień Budowlanych e-CRUB)

e-CRUB, introduced on 1 August 2022, is a search tool which provides information about the licenced engineers and architects. Additionally, it contains information about punishments imposed under the professional liability, which makes the construction process more transparent.

#### II. Digital Logbook of Works (Cyfrowa Książka Obiektu Budowlanego - CKOB)

This tool was introduced on 1 January 2023, and it is available by logging in at [e-kob.gunb.gov.pl](#). It allows the owners and site managers to make entries on various aspects concerning a work, including inspections, expert reports, changes to the building structure and work-related events.

#### III. Digital Construction Logbook (Elektroniczny Dziennik Budowy - EDB)

EDB's primary objective is to record progress of building works and any significant events on a construction site. EDB can be found at [e-dziennikbudowy.gunb.gov.pl](#) and it was launched there on 27 January 2023. It is a key digital document, which should be maintained in a transparent and reliable



manner. Importantly, the supervisory authorities and the architectural and construction bodies have access to any data recorded there. It is worth noting that as a consequence of introducing a digital logbook, time when a paper construction logbook can be available will be significantly reduced. In accordance with the draft amendment, the final date will be set for 31 December 2029 with only a few exceptions allowed. After this date, the only version available will be the online one.

### Projected changes

According to the proposed draft amendments to the Construction Law Once the Council of Ministers had completed its work on the draft, it was officially submitted to the Sejm on 1 June 2023. Together with the draft, the relevant supporting documents, including the explanatory memorandum of the draft, were provided. The draft was registered under number 3336. The available information on the progress of legislative work indicates that the draft is after the first reading in committees and the work on it continues.

**The draft envisages an acceleration of the introduced changes in the digitisation of the construction sector and comprehensive digitisation of the investment and construction process, including electronic administrative proceedings.** The Administrative Proceedings System in the Construction Sector will include the creation of a Database of Building Permit Designs. Its functioning will be regulated in the new Chapter 7b of the Construction Law, in Articles 79l to 79t. This database will collect electronic versions of building permit designs, covering both land or plot

development designs and architectural construction and technical designs. They will be shared by users with accounts on the [e-Construction](#) portal. In addition, the database will contain all necessary attachments to the designs and documents required by separate regulations, including applications, notifications and declarations received as part of the investment and construction process.

There are also plans to expand the [e-building.gunb.gov.pl](#) website to make the investment process even easier. The General Office of Building Control officially announced at its conference held on 30 August 2023 the full launch of the [e-Construction](#) portal.

The main objectives of this portal include:

- Centralisation of digital services of GUNB, specifically by providing access to all digital services of the General Office of Building Control in one easily accessible place;
- Expansion of the GUNB use by increasing the number of active users of the applications provided by the General Office of Building Control;
- Promotion of the project involving digital building services by strengthening awareness and popularity of the project of digital building services to facilitate and streamline processes in the construction industry.

In addition, the portal already provides information on the Administrative Proceedings System in Construction Sector (SOPAB).

However, there are some constraints related to the functioning of SOPAB and concerns about the digitisation process of the construction sector and the digital

exclusion of a large part of the population in Poland. According to the project's creators, presently most of the society has a basic knowledge of digital communication techniques. But those struggling with the digital process will be able to seek assistance from the local authorities directly where they are residing. At the moment, however, the legislation does not provide for any special arrangements in this regard.

The changes regarding the process digitisation aim to **streamline and accelerate procedures**, which will benefit both investors and regulators. But, like any changes, they bring along a lot of questions and concerns to which there are no answers yet. In addition, the current mess in the legislative work means that we still do not have clear dates when the amendments and changes will be made. However, what is certain is that the changes are imminent. Looking at the progress of works on the portals already in use, introducing the new rules for the operation of procedures through these portals is only a matter of time, so already now it is worth checking how they operate and start preparing ourselves for the digitisation of the entire procedure.

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