

# PNP LAW'S LEGAL NEWSLETTER

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*With this Newsletter, our team of PNP LAW lawyers would like to present to you certain chosen legal issues.*

*Legal status as at 30 September 2020.*

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## **TAXES**

### **Limited partnerships and some general partnerships subject to CIT; rules of taxation of general and limited partners**

Pursuant to the draft submitted to the Sejm on 30 September 2020, as of 1 January 2021 all limited partnerships, regardless of their specific features, will be subject to the CIT tax. The said tax will also apply to certain general partnerships, provided that they have their seat or management board in the territory of the Republic of Poland and they jointly fulfil the following conditions:

- not only natural persons are partners of the general partnership,
- before the commencement of a financial year, the general partnership will not submit the information concerning taxpayers of the personal income tax and corporate income tax having, directly or through entities which are not taxpayers of the income tax, rights to participate in the profit of the company or will not update information within 14 days from the date a change occurs.

Moreover, a general partner of the limited partnership will be subject to taxation with a fixed, flat-rate income tax of 19%. At the same time, following the model of a limited joint-stock partnership, the general partner will be entitled to decrease the tax on dividend by the CIT tax paid by the limited partnership. This deduction will be proportional to participation in the profit of the partnership. If the limited partnership has a status of a small business taxpayer, it will pay the CIT tax of 9% and the general partner will pay 10% extra when the profit is paid out. The taxation will amount to 19% in total. If the partnership pays the basic CIT rate of 19%, the general partner will not pay extra tax. Thus, general partner's income in limited partnerships will not be subject to double taxation.

Limited partners' profit, similarly to that of general partners', will also be subject to taxation with a flat-rate income tax of 19%. However, limited partners will not be able to decrease their tax by the CIT tax paid by partnerships. Thus, limited partners will be subject to standard double taxation. A relief provided for the limited partners is that 50% of limited partner's earnings from the limited partnership, but maximum PLN 60,000.00 per year, will not be subject to double taxation. Limited partners who i.a. are, at the same time, general partner's shareholders or management board members may not benefit from the said relief.

#### Note:

The above draft is at the initial stage of the legislative process and may be changed.

*By: Marta Nowak, mn@pnplaw.pl*

### **So-called Estonian CIT with numerous limitations**

On 30 September, the governmental draft of changes concerning the CIT tax was submitted to a debate in the Parliament. The draft relates to the solution to be introduced as of 1 January 2021 under which only certain entrepreneurs paying CIT will be able to enjoy the so-called Estonian CIT. The essence of this solution consist in shifting the moment of the tax obligation to the moment of payment of profits from the enterprise. The entrepreneurs who seek funds for new investments and business development will be able to benefit from this change.

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One of the numerous limitations as to the use of the above-mentioned solution will be that only a capital company (with limited liability or joint-stock company) in which shareholders are represented **by natural persons only** will be able to benefit from the taxation based on new rules. Thus, only a few are expected to benefit from the above-mentioned method of taxation.

 Note:

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*By: Mirosław Stefanik, ms@pnplaw.pl*

### **Higher limit of revenues subject to 9% of CIT and obligation to publish tax strategy**

On 30 September, the governmental draft of changes concerning CIT was submitted to a debate in the Parliament. The limit of revenues of the current tax year entitling to enjoy the decreased rate of CIT amounting to 9% is planned to be increased **from EUR 1.2 million up to EUR 2 million**.

Moreover, the taxpayers whose revenues in the previous year exceeded the sum in PLN corresponding to the equivalent of EUR 50 million will have to draw up **the information about the implemented tax strategy and to make it public**. The obligation in question will also apply to taxpayers acting in the form of a tax capital group, regardless of the sum of revenues generated by such group.

 Note:

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*By: Mirosław Stefanik, ms@pnplaw.pl*

### **New JPK VAT [SAF-T VAT] with declaration as of 1 October 2020**

As of 1 October 2020, the entrepreneurs being active VAT taxpayers are obliged to send to the tax office the Standard Audit File (JPK) in a new form. The new form of the JPK\_VAT file will cover both declaratory and record parts. This means that the file will contain information which the taxpayer was obliged to submit to the tax office in the form of a tax declaration VAT-7/VAT-7K. The new file will be named JPK\_V7M (for monthly settlements) or JPK\_V7K (for quarterly settlements). As of 1 October 2020, there will be no possibility to submit separate declarations VAT-7/VAT-7K. The new JPK with a declaration may be submitted only in an electronic form: for monthly periods – by the 25<sup>th</sup> day of a month for the previous month, and for quarterly periods – by the 25<sup>th</sup> day of a month following the quarter to which the declaration relates. If the last day for sending the file is on a Saturday or public holiday, the taxpayer has the possibility to send the file on the first working day following the day off.


*By: Mateusz Dyśko, md@pnplaw.pl*

### **Abolition relief to be liquidated**

The Government intends to liquidate, as of 1 January 2021, an abolition relief provided in Article 27g of the PIT Act. The very essence of the abolition relief is to annul the consequence of proportional deduction with respect to certain income sources and to equalise their effective

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taxation with the consequence of the method of exemption with progression. The Polish residents who earn their salaries and pay income tax abroad may benefit from that relief. If the relief is liquidated, it will be to the disadvantage of taxpayers who earn their incomes in the countries where tax rates are lower than in Poland. The tax difference will have to be paid in Poland. The tax-free income granted by the Government for those taxpayers is PLN 8,000. Thus, starting from the new year the Poles working in countries where, in order to avoid double taxation, the method of proportional deduction is applied (e.g. in Denmark), will pay a higher tax than they would have if the method of exemption with progression was applied.

 Note:

The above draft is at the initial stage of the legislative process and may be changed.

*By: Marta Nowak, mn@pnplaw.pl*

## **LABOUR LAW**

### **Fuel costs included in a lump-sum for employees' company cars**

Costs of fuel paid by the employer who makes a company car available to the employee for private purposes are included in the lump-sum earnings referred to in Article 12 Section 2a of the PIT Act. On 11 September 2020 the Minister of Finance issued in that respect a general interpretation concerning the employee's lump-sum earnings connected with using the company car for business purposes.

The lump-sum includes also such charges as: insurance, change of tyres, minor repairs, periodic vehicle inspections which the employment establishment who is the owner of a car has to pay so that the car is in working order and may participate in road traffic.

On the other hand, the lump-sum does not include i.a. highway tolls and parking fees.

*By: Marta Nowak, mn@pnplaw.pl*

### **Specifying rules of remote work**

The Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them introduced the possibility of remote work as at the day of the Act's entry into force. The Act states that within the period of the state of epidemic threat or the state of epidemic announced due to COVID-19 and within three months upon its end, the employer may request the employee to perform remote work for a period specified by the employer, outside the permanent place of work. The Act, which amends the mentioned act, the so-called anti-crisis shield 4.0, clarifies a number of conditions of remote work performance, i.a. the employee performing remote work needs to have abilities and technical capabilities as well as housing conditions to do so, and the nature of work needs to allow for remote work. In particular, the employees performing work with the help of means of direct remote communication may be requested to perform remote work. Remote work may also concern performing of manufacturing parts or material services. In principle, the employer provides tools and materials as well as logistics services for remote work performance. Upon the employer's

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request, the employee performing remote work is obliged to maintain records of performed activities. Pursuant to applicable regulations, the employer may at any time cancel the request of remote work performance. Finally, it should be noted that work is currently underway to regulate remote work directly in the Labour Code so that it becomes a permanent part of the legal order within the scope of labour law.

*By: Dorota Dąbrowska-Kobus, ddk@pnplaw.pl*

### **Limiting sum of statutory severance payment**

Pursuant to the applicable regulations, i.e. the Act of 13 March 2003 on particular principles of employment termination for reasons not attributable to employees, the employers who employ at least 20 employees are obliged to pay out severance payments in the event of employment termination for reasons not attributable to the employees. The provisions of the so-called anti-crisis shield 4.0 temporarily limited the maximum sum of severance payments paid out on this basis. A provision was added providing for a limitation of maximum sums of benefits paid out in connection with the employment termination in the event of a decrease in economic turnover at the employer's, specified by the Act, or a significant increase in burden of the remuneration budget. The sum of benefits specified by the Act, paid out to employees in connection with the termination of employment contract, including severance payments, may not exceed ten times the minimum remuneration for work, i.e. PLN 26,000 in 2020. The regulation refers to benefits which have to be paid out pursuant to the provisions of law. Due to this fact, the Ministry of Family is of the opinion that the limitation in question does not refer to the sum of severance payments under the company's internal regulations, as for instance, the remuneration rules. The provision has already entered into force and will be binding until the end of the state of epidemic threat or the state of epidemic announced due to COVID-19.

*By: Dorota Dąbrowska-Kobus, ddk@pnplaw.pl*

### **Increase of minimum remuneration rates for work as of 2021**

Pursuant to the regulation published by the Council of Ministers, as of 1 January 2021, the minimum monthly remuneration for work will be PLN 2,800. At the same time, the minimum hourly rate will be PLN 18.30. Compared to 2020, the minimum remuneration will be increased by PLN 200 and the hourly rate – by PLN 1.30.

Entrepreneurs whose costs of performed services depend on the sum of the minimum remuneration rates for work have 3 months to renegotiate new rates of services with their contractors.

*By: Paweł Tomasiak, pt@pnplaw.pl*

### **Last stage of implementing Employee Capital Plans (PPK)**

As of 1 January 2021 the Act on Employee Capital Plans (PPK) applies to all entities which up to this point have not been obliged to include their employees in PPK and to entities of the public finances sector, regardless of the number of employees. This means that the employers are obliged to conclude agreements on PPK management until 23 April 2021 with a financial institution chosen in consultation with the trade union, and if there is no trade union at the

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employer's, then in consultation with the representation of the employees, appointed in the way adopted at the given employer's. Next, the employer has to conclude the agreement on PPK maintenance with the same financial institution until 10 May 2021.

*By: Dorota Dąbrowska-Kobus, ddk@pnplaw.pl*

## **SUPPORT FOR ENTREPRENEURS RELATED TO COVID-19 PANDEMIC**

### **Deadlines for submitting requests for co-financing under the so-called Anti-Crisis Shield 5.0**

On 22 September 2020 the President signed the Act dated 17 September 2020 which amends the Act on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and some other acts. The Act provides, i.a. that, if a standstill is introduced or the working time is decreased, requests for co-financing of employee salaries from the Guaranteed Employee Benefits Fund may be submitted within 30 days at the latest from the date the state of epidemic threat or the state of epidemic is declared over. The regulation is to come into force at the beginning of October 2020.

*By: Dorota Dąbrowska-Kobus, ddk@pnplaw.pl*

### **Additional support for entrepreneurs from tourism, art and amusement industries**

In accordance with changes introduced by the subsequent anti-crisis shield, entrepreneurs from tourism industry, art industry, running hotels, escape rooms, as well as amusement and recreation activities specified in the Act, may count on additional support from the State. The assistance will be provided in the form of downtime pay, additional downtime pay, as well as release from the obligation to pay social contributions for July, August and September 2020. Obtaining the right to individual elements of support depends on the fulfilment of conditions indicated in the Act of 17 September 2020 which amends the Act on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, and certain other Acts, where the conditions and codes of activities according to PKD [Polish Classification of Activity] are specified entitling entrepreneurs to obtain the support.

*By: Aleksander Kowalski, ak@pnplaw.pl*

## **CONSTRUCTION LAW**

### **Numerous and significant changes in construction law**

Significant changes in the construction law have been in force since 19 September 2020. The changes aim at simplifying and accelerating the investment and construction process. For example, the catalogue of situations in which the construction permit, construction notification or notification on performing other construction activities is not required.

The construction design has been divided into 3 designs:

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- design of plot or area management (location, transport network, information on the object's impact area),
- construction and architectural design (spatial system, designed technical and material solutions),
- technical design (description of the construction, installation, energy performance).

The investor may at present file **fewer documents at the initial stage of a construction process** than before. As of 19 September, only the first two designs have to be filed with the application for the construction permit, i.e. the design of plot or area management and the construction and architectural design. The technical design, in turn, has to be filed with the site manager before commencing the works, and with the construction supervisory authority as late as together with the application for the occupancy permit.

The changes have also been introduced with regard to obtaining **a consent on derogation** from technical and construction regulations. Until now, a competent authority may have granted its consent to derogation prior to granting the construction permit. At present, the authority may grant such consent also prior to changing the construction permit.

The new regulations have also increased the **dependability of decisions made in a construction process**, by introducing a rule that the construction permit will not be cancelled if 5 years have passed from the day of its delivery or announcement. Until now, the construction permit might have been repealed at any time. In turn, the occupancy permit will not be cancelled if 5 years have passed from the day when it became final.

 Note:

As a rule, the hitherto regulations apply to the cases instituted and not completed before 19 September.

*By: Mirosław Stefanik, ms@pnplaw.pl*

### **Conditions for connecting to the water and sewage system with no fees**

The Act on Collective Supply in Water and Collective Discharge of Sewage was also amended on 19 September this year. The amended Act specifies in detail the conditions for connecting to the systems (i.a. the deadlines for issuing the conditions for connecting to the systems were specified) and penalties for the water and sewage company which does not issue the conditions for connecting to the systems within the specified deadlines (PLN 500 for each day of a delay). A prohibition was also introduced to charge fees for issuing the conditions for connecting to the systems, amending and updating the conditions, or transferring the conditions to a different entity.

*By: Mirosław Stefanik, ms@pnplaw.pl*



## ENERGY LAW

### Support for offshore wind farms: new proposals of the Ministry of Climate

The Ministry of Climate has prepared a draft **act on promoting power generation in offshore wind farms**. The draft provides for a separate support scheme dedicated to the installations used to generate energy from the offshore wind.

The draft regulations provide for a **two-stage support scheme** allowing for significant acceleration of an investment process with regard to the offshore wind farms planned to be constructed in the Polish exclusive economic zone. The model adopted in both stages is based on a bilateral contract for difference.

Both in the first and in the second stage of the support scheme, producers will apply for the **right to cover the negative balance**. In practice, the right to cover the negative balance means covering the difference between a market price of energy and a price which will make it possible for producers to cover the costs of generating energy offshore. The stages will only differ in the way of selecting the projects which will have the right to have the negative balance covered.

In the first stage of the support scheme, the right to cover the negative balance will be granted at the producer's request via **an administrative decision issued by the President of the Energy Regulatory Office**. The projects that will be able to take part in this stage are the ones which are highly advanced in the investment process, and guarantee energy generation before 2030, and the ones located in the area guaranteeing the lowest average cost of energy generation. Every decision of the President of the Energy Regulatory Office will be notified to the European Commission and only upon its approval, it will be implemented.

Joint installed capacity of the offshore wind farms which will be able to take part in the first stage of the support scheme is specified in the Act and amounts to 5.9 GW. The possibility to enter the first stage of the support scheme is to be ended on 30 June 2021.

**In the second stage of the support scheme, the right to have the negative balance covered will be granted at auctions.** The auctions will be settled according to the pay as bid principle, and the winning bid will be the one with the lowest price. All producers who intend to take part in an auction will have to go through a pre-qualification process.

The act introduces two new obligations which are to stimulate a local supply chain in both the first stage and the second (pre-qualification for the auction) stage of the support scheme. The producers will be obliged to present **a plan of the supply chain** of materials and services in the process of construction and operation of an offshore wind farm.

The draft will now be subject to parliamentary works.

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