

PNP LAW'S LEGAL NEWSLETTER

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Lawyers' team at PNP LAW would like to introduce you to selected legal issues as part of this Newsletter.

Legal status as at 8 December 2020.

CONTENTS

Employment in the remote working basis	2
Changes in the RES Act – government draft bill	2
Real property company	3
Update of online shops' regulations	4
Procedure for withholding tax return in payments for over PLN 2 million – another postponement	4
Sugary drink tax	4
CIT in limited partnerships	5
Simple joint stock company and electronic registration documents as of 1 March 2021	5
Paper shares will lose validity	6

EMPLOYMENT IN THE REMOTE WORKING BASIS

As of 5 December 2020, employees and other employed persons who are under compulsory isolation at home may, upon the employer's or the employing entity's consent, perform work specified in their contract on the remote working basis and receive remuneration.

New regulations were introduced by the Act of 27 November 2020 on the amendment of 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. The change aims at providing for continuity of work at the employers' in a situation of an increased number of SARS-CoV-2 cases in Poland. The amendment applies to the employees who do not present the infection symptoms or in whom the symptoms are mild. If the symptoms get more severe and the person is unable to work, the employee / employed person may receive remuneration for the period of incapacity to work referred to in the Labour Code or a sickness benefit in cash.

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CHANGES IN THE RES ACT – GOVERNMENT DRAFT BILL

The Ministry of Climate has planned a few interesting facilitations and changes aimed at stimulating renewable energy development. The proposals regard the issue of support system, licence requirements, and spatial development.

Extending support periods is the key element of the proposed changes. The Ministry of Climate intends to extend the maximum deadline for providing public aid within the auction system and the FIT and FIP systems from 30 June 2021 to 30 June 2026, that is, by 5 years. In turn, the maximum period of support systems for RES energy producers will be extended until 30 June 2045.

As part of simplification, the Ministry of Climate proposes increasing the installed power threshold up to which no licence is required. Pursuant to the draft bill, the small installation, i.e. an installation with joint installed power bigger than 50 kW and not bigger than 1 MW, will be exempt from the licence requirement. Thus, the present threshold of 0.5 MW will be increased two-fold. A business activity in the scope of producing power in a small installation will still require an entry to the registry of producers maintained by the President of Energy Regulatory Office.

It is also worth noticing that the proposed changes in the provisions on spatial development are favourable especially for the photovoltaic sector. At present, it is impossible to build an installation producing power from RES with the power increasing 100 kW if such investment was not included in the study of conditions and directions for spatial planning in a given municipality and, what follows, in the local spatial development plan. As preparing new or amending the existing local spatial development plans is a costly and time-consuming procedure, these provisions pose a significant obstacle in the development procedure for RES installations. Thus, the Ministry proposes that the equipment producing power from RES with the power not exceeding 500 kW be located despite the lack of an appropriate inclusion in the aforementioned local law regulations. An additional benefit would apply to photovoltaic installations as in their case, the threshold of 100 kW will be completely abolished for the photovoltaic equipment other than the freestanding one (so, for example, roof panels) and for the traditional freestanding photovoltaic panels the threshold would amount to 1 MW.

Unfortunately, the draft bill omits numerous obstacles in the scope of spatial development still affecting wind farms.

At present, the bill is under consultations and government works.

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REAL PROPERTY COMPANY

New tax regulations will come into force as of 1 January 2021. Some of them will concern tax obligations of the so-called real property companies.

In accordance with the new regulations, real property company will be understood as an entity other than a natural person, obliged to draw up a balance sheet on the basis of accounting regulations, in which:

- as at the last day of a year preceding the fiscal year, and in the case when a real property company is not an income tax payer – at the last day of a year preceding the financial year, the balance sheet value of the real property or the balance sheet value of rights to the real property constituted (directly or indirectly) at least 50% of the balance sheet value of assets,
- the real properties are located on the territory of Poland, and
- the balance sheet value of the real properties exceeds PLN 10 million, and
- in the previous fiscal year at least 60% of the total tax income was obtained from: lease, real property leasing or agreements of a similar nature, or from the rights concerning real properties or other real property companies.

Real property company will also be understood as a company fulfilling the above conditions, which obtained at least 60% of the total tax income in the previous fiscal year from: lease, real property leasing or agreements of a similar nature or from the rights concerning real properties or other real property companies. The legislator has provided for a different definition of a real property company in the case of entities commencing their business activity.

Starting from the new year, real property companies will become income tax payers for the disposal of shares in such company (the shares of which are disposed of), providing at least 5% of rights to vote or to participate in company's profit, when one of the parties to the transaction is an entity not being a Polish resident.

This means that the real property company will be obliged to calculate and collect tax (19% of income tax) from the tax payer and pay it to the tax authority in due time. So far, such obligation lied directly with taxpayers, i.e. shareholders of a real property company selling their shares. The real property company will be liable for taxpayer's obligations with all its assets.

In addition, the revision of regulations also requires the real property company and shareholders (directly or indirectly holding at least 5% of shares/rights of a similar nature) to inform the authorities about entities directly or indirectly holding shares in the real property company. Real property companies not subject to unlimited tax obligation in an EU member state or in other EEA state will

be obliged to appoint a tax representative. Failure to fulfil this obligation will result in imposing a fine up to PLN 1 million on the real property company.

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UPDATE OF ONLINE SHOPS' REGULATIONS

The amendment of the Act on consumer's rights and the Civil Code will enter into force as of 1 January 2021. Under the new regulations, natural persons conducting business activity will have the right to the so-called consumer protection, in certain cases (most importantly, the agreement should not be of "professional nature"). The protection will be applicable in the following scopes:

- Forbidden contractual provisions (abusive clauses);
- Warranty for defects (i.a. not applying the provisions on losing the right to warranty among entrepreneurs under Article 563 of the Civil Code);
- Right to withdraw from a contract concluded remotely or outside of the business premises.

The aforementioned new regulations are not applicable to contracts entered into before 1 January 2021.

The new regulations require, among others, that online shops update their regulations.

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PROCEDURE FOR WITHHOLDING TAX RETURN IN PAYMENTS FOR OVER PLN 2 MILLION – ANOTHER POSTPONEMENT

Most probably, the Minister of Finance will once again postpone by half a year implementing the provisions regarding applying the procedure of withheld tax refund of payments over PLN 2 million to the benefit of non-residents. The provisions were amended on 1 January 2019. The implementation of the new provisions has been postponed by two and a half year in total.

As a result of this postponement, until the end of June 2021 PIT and CIT taxpayers who pay abroad receivables for:

1. certain intangible services (advisory, legal, market research, marketing) and
2. remuneration for licences, interest or dividends,

will not have to investigate whether they have paid more than PLN 2 million to one counterparty in a single year. Such approach is caused by both the coronavirus epidemics and doubts concerning the content and interpretation of the provisions themselves.

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SUGARY DRINK TAX

Provisions amending certain acts with respect to promoting consumers' healthy choices enter into force on 1 January 2021. The amendment introduces, among others, a fee on consumer-ready drinks containing sweeteners, caffeine, and taurine, called the sugary drink tax.

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The fee will be imposed on introducing to the national market sugary drinks, which is to be understood as forms of sale specified in the act. The fee is to affect above all the wholesale trade, namely delivering the drinks to the first point of retail sale. However, in strictly specified cases, the fee will be applicable to the non-wholesale trade.

The fee will be paid by natural persons, legal persons, and organisational units without legal personality which perform the aforementioned activities. The obligation to pay the fee arises upon introducing the product to the national market. The fee is composed of a fixed and a variable components and its level is to be determined on the basis of the volume of the drink and sweetener content (especially sugars), whereby it cannot be higher than PLN 1.20 per 1 litre of drink.

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CIT IN LIMITED PARTNERSHIPS

As we wrote in the previous Newsletter, due to the fact that limited partnerships will acquire the status of a corporate income taxpayer, partners (including general partners) obtaining revenues from taking part in the partnership's profits are taxable with income tax, similarly to legal persons generating revenue from taking part in the profit.

The limited partnership will become a corporate income taxpayer as of 1 January or 1 May 2021 (depending on the choice the partnership will make) and will no longer be transparent to the income tax. The partnership will pay CIT on the achieved profit by withholding tax due throughout the year.

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SIMPLE JOINT STOCK COMPANY AND ELECTRONIC REGISTRATION DOCUMENTS AS OF 1 MARCH 2021

Two large amendments of provisions with regard to business activity are to enter into force as of 1 March 2021. The first change is the Act on changing the act on the National Court Register adopted in January 2018. The Act introduces a further digitalisation of the Register of Entrepreneurs of the National Court Register by, among others, obliging entities to file all applications only in electronic form. What is more, the electronic registration documents of the entities entered in the Register of Entrepreneurs are to be publicly available through ICT networks.

The second change regards the long-expected amendment of the Code of Commercial Companies and Partnerships and the new kind of company, which will appear in the Polish law order, namely the so-called simple joint stock company. The new kind of company will be an answer to the growing demand of the business (especially of the start-up sector) for a minimally formalised joint stock company. The legislator provided for, i.a. a flexibility in creating the company's bodies, minimising the requirements regarding the share capital and a simple way of selling shares.

Entering into force of the aforementioned provisions has been postponed by a year. Let us hope that this additional year allowed the public organs and ICT systems get appropriately prepared to implement these solutions.

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PAPER SHARES WILL LOSE VALIDITY

We kindly remind you that 2020 was the last year of functioning of paper shares in the form of a document. This is due to the fact that the rule of shares' dematerialisation has been implemented. The dematerialisation procedure consists in changing the form of shares from paper to an entry in an ICT system (digital record). Eliminating paper shares and bearer shares from trading will be the main result of the dematerialisation.

Shares issued in the paper form will become invalid and will be compulsory dematerialised as of 1 January 2021. After 1 March 2021, the share documents will be only of probative value in order for the shareholder to prove to the company that they have shareholders' rights. Such probative value will be in force for five consecutive years, namely until 1 March 2026. After this date, the shareholder will no longer have the shareholders' rights.

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