

LEGAL NEWSLETTER



Extended deadline for CIT settlement

The Minister of Finance issued a regulation, in which they decided that the deadline for settling the corporate income tax by taxpayers in the fiscal year which ended between 1 December 2022 and 28 February 2023 shall be extended by 3 months, i.e. until 30 June 2023.

Whereas no changes were made to the deadlines related to financial statements. They should be drawn up until 31 March 2023, approved until 30 June 2023 and submitted to a proper register until 15 July 2023.



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Otrzymuje: _____ ust. 2a ustawy, urzqd _____

A. MIEJSCE I CEL SKŁADANIA INFORMACJI

5. Urząd skarbowy, do którego adresowana jest informacja 2)

6. Cel złożenia formularza (zaznaczyć właściwy kwadrat):
 1. złożenie informacji

B. DANE IDENTYFIKACYJNE PŁATNIKA
* - dotyczy płatnika niebędącego osobą fizyczną

7. Rodzaj płatnika (zaznaczyć właściwy kwadrat):
 osoba fizyczna

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The information in this Newsletter is of general information nature and is not legal assistance.

Due to the possibility of changes in the law, an analysis of the current legal situation as at the time of making a decision is recommended. We suggest contacting our advisers before taking appropriate action.



Regulations re: COVID-19 with no impact on limitation period of tax liabilities

The Supreme Administrative Court in its resolution of 27 March 2023 with reference no. I FPS 2/22 confirmed that regulations introduced due to the COVID-19 pandemic, concerning the suspension of time limits of administrative law, do not have impact on suspending the limitation period of tax liabilities.

As of the covid act's entry into force, the fiscal authorities have been arguing with taxpayers whether new regulations have impact on the limitation period of tax liabilities. The dispute resulted from the imprecise wording of one of the regulations which suspended time limits of administrative law. In the absence of agreement as to whether tax law is part of administrative law, the position of the voivodeship administrative courts was not uniform.

The judgment, beneficial for taxpayers, means that the period, in which the fiscal authorities are entitled to examine tax settlements and issue adverse decisions for taxpayers on tax liabilities, has not been extended.



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Temporary change of manner of VAT taxation on supply of electricity, gas, and greenhouse gas emission allowances

In order to increase the competitiveness of Polish exchange trading system, the legislator introduced a new manner of taxation with VAT on the supply of electricity in the power system, of gas in the gas system, and providing services in the scope of transferring greenhouse gas emission allowances, binding as of 1 April 2023.

In the period from 1 April 2023 to 28 February 2025, the purchaser, and not the seller, will be a VAT taxpayer for such transactions (reverse charge). The change of manner of taxation concerns transactions carried out on the Commodity Exchange, regulated market, and Organized Trading Facility carried out directly or indirectly through VAT taxpayers registered in Poland.

The supplier and the purchaser are obliged, under pain of liability for fiscal offences, to submit to the head of the fiscal office a notification on commencing activities based on the reverse charge mechanism.



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Parent can choose legal basis for remote work

In accordance with a new chapter on the remote work introduced to the Labour Code, as of 7 April, it will not be possible to refuse remote work i.a. employees who raise a child of up to 4 years of age or a child with disability unless there are reasonable grounds to do so, such as work organization or type of work.

Moreover, as of 26 April, one more institution will be introduced to the Labour Code i.e. flexible work organisation. This will provide parents of children of up to 8 years of age with a possibility to apply for flexible work organization, including also remote work or decreasing working time. Compared to changes introduced on 7 April, the employer will have more freedom to reject the application of the employee for flexible work than for remote work. The fact that the employee submitted an application for flexible work organisation may not constitute a reason justifying the termination of the employment contract or disciplinary dismissal by the employer. Moreover, the employer will need to prove that when terminating the employment contract, they were guided by a reason other than the submission of the application for flexible work by the employee.

Due to the above, a parent of a child of up to 4 years of age will be able to choose from which legal basis they want to benefit i.e. the one introduced on 7 April or on 26 April.



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Release from work due to force majeure – new type of release from work

On 26 April, an amendment to labour law regulations will enter into force introducing, among others, release from work due to force majeure. The legislator did not explain the meaning of force majeure within this new regulation; they, however, indicated additional circumstances which will have to occur for the employees to benefit from the new right. These are urgent family matters caused by an illness or an accident which require a necessary and immediate presence of the employee.

Employees will be entitled to the new release from work for 2 days or 16 hours per each calendar year, whereby it will not be possible to use the unused release in the following calendar year. When it comes to employees working on a part-time basis, the amount of hourly release will be determined proportionally to their working time.

Employees will be entitled to 50% remuneration for the period of release.

The employee may submit the said application on the day of benefiting from the release at the latest, and the employer is obliged to take the application into account.



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Unpaid care leave – new type of leave

Directive of the European Parliament and of the Council 2019/1158, referred to as the Work-Life Balance Directive, is transposed to the Polish legal order through amendments to the Labour Code as of 26 April 2023. The amendment introduces a new type of employee leave, i.e. care leave. This will not be equal to leave on demand, two days of child care leave, or release from work due to force majeure. The employee will be entitled to care leave for 5 days in a year to ensure personal care or support to a person being a family member or residing in the same household who requires care or support for serious medical reasons.

The legislator specifies that a family member means son, daughter, mother, father or employee's spouse. They, however, do not indicate what hides behind the term "serious medical reasons" – this will be subject to further interpretation in the course of applying regulations.

To use the care leave, the employee should submit a proper application in written or electronic form to the employer at least 1 day before the planned commencement of using the leave. The employer may not refuse the employee such leave. The application should specify, among others, the reason for using the leave.

The employee using the care leave is subject to protection against dismissal similar to an employee during maternity leave. The employee may also benefit from the so-called flexible work organisation. At the same time, in principle, the employee is not entitled to remuneration during the care leave.



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Family foundation for entrepreneurs

The family foundation is a new institution in the Polish law which may serve entrepreneurs to save family companies and their assets, and which successfully operates in many other countries. The regulations are soon to enter into force (on 22 May 2023). According to the new provisions, it will be possible to transfer to the family foundation both shares in the company and assets of natural persons, which the family foundation will manage and make specific payments for the benefit of both founders and certain beneficiaries (e.g. founder's children or other family members). The scope of operation of the family foundation will be limited to i.a. proceeding and participating in companies, lease or disposal of property, as well as buying and selling securities and granting loans for the benefit of its companies and beneficiaries. The family foundation will be able to conduct agricultural activity, within its own farm, and forestry. The family foundation is to prevent the fragmentation of assets belonging to a natural person between their heirs, after the death of such person.

Special attention should be paid to the regulations on taxation of the family foundation. It will be exempt from CIT within both founder's contributions and foundation's incomes, and the foundation will pay the tax only on payments made for the benefit of foundation's beneficiaries amounting to 15%. Moreover, the payments made by the family foundation will benefit from tax preferences. Therefore, exempt from PIT are payments for the benefit of a founder and family members (spouse, children, grandchildren, parents, grandparents, stepchildren, siblings, stepfather and stepmother – the so-called zero group in inheritance and donation tax). Whereas the payments made to extended family members (1st and 2nd tax groups in inheritance and donation tax) will be subject to PIT of 10% (according to the recently adopted amendment by the Sejm). In the case of payments made for the benefit of other beneficiaries – PIT will amount to 15%.

The family foundation may therefore be a beneficial instrument allowing Polish family companies for building capital.



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Fine for lease without energy performance certificates

Significant changes concerning energy performances certificates of buildings and their parts will enter into force on 28 April 2023. Energy performance certificate specifies the total demand for the energy necessary to use the building and its parts (premises) e.g. for heating, ventilation or air conditioning of the building or premises.

Energy performance certificates of buildings have been in force since 2009, however, after the changes which will be in force as of the end of April, in the case of failure to submit an energy performance certificate to the buyer at concluding the sales contract of the building or premises, or to the lessee at concluding the lease contract, it will be subject to a fine of up to PLN 5,000. Moreover, a notary in the sales contract of a developed real property or premises will be obliged to record the fact of providing the buyer with the energy performance certificate, and in the case of failure to provide such certificate, the notary will be obliged to inform about the penalty of a fine for failure to fulfil such obligation. Energy performance certificates may also be issued in an electronic form.

It should be remembered that new regulations oblige investors to enclose an energy performance certificate to a notification on completion of construction of the building facility or application for granting a permit for use. This obligation does not pertain only to residential houses with the building area of up to 70 m² constructed for investor's own residential purposes.



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Changes in migration law

On 7 April 2023, an amendment to the Act on Foreigners will enter into force.

The amendment will help in ensuring conditions for applying provisions of Regulations of the European Parliament and of the Council (EU) nos. 2018/1860 and 2018/1861. These Regulations relate to citizens of third countries illegally staying in the territory of member states and to monitoring whether foreigners covered by these decisions left the territory.

The prerequisite for granting a long-term EU residence permit is the foreigner confirming their knowledge of the Polish language at level B1. The act will extend a catalogue of documents which the foreigner may use to certify knowledge of the Polish language at such level.

New regulations will also allow to obtain a Polish travel document by foreigners who have difficulties in obtaining travel documents in countries of their citizenship (e.g. citizens of Belarus). Whereas citizens of Ukraine will be able to obtain an electronic document with personal data of a minor child within the public mobile application diia.pl. Such document will constitute confirmation of holding by the citizen of Ukraine PESEL number with the status "UKR" and, at the same time, will become a residence document of that child.



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