



Information

Employer unable to dismiss employee before dispute resolved

The end of September was the effective date of changes that mandate the continued employment of an employee during a dispute. The new regulations are being introduced along with bridging pension changes. Amendments to the Code of Civil Procedure, introduced by the Act of 28 July 2023 on amending the Bridging Pensions Act and certain other acts (2023 Journal of Laws, item 1667), which implement new provisions on labor disputes, became effective on 22 September. In accordance with the amendments, in finding an employment contract termination ineffective, or reinstating an employee to work, the labor court will have to (at the employee's request)

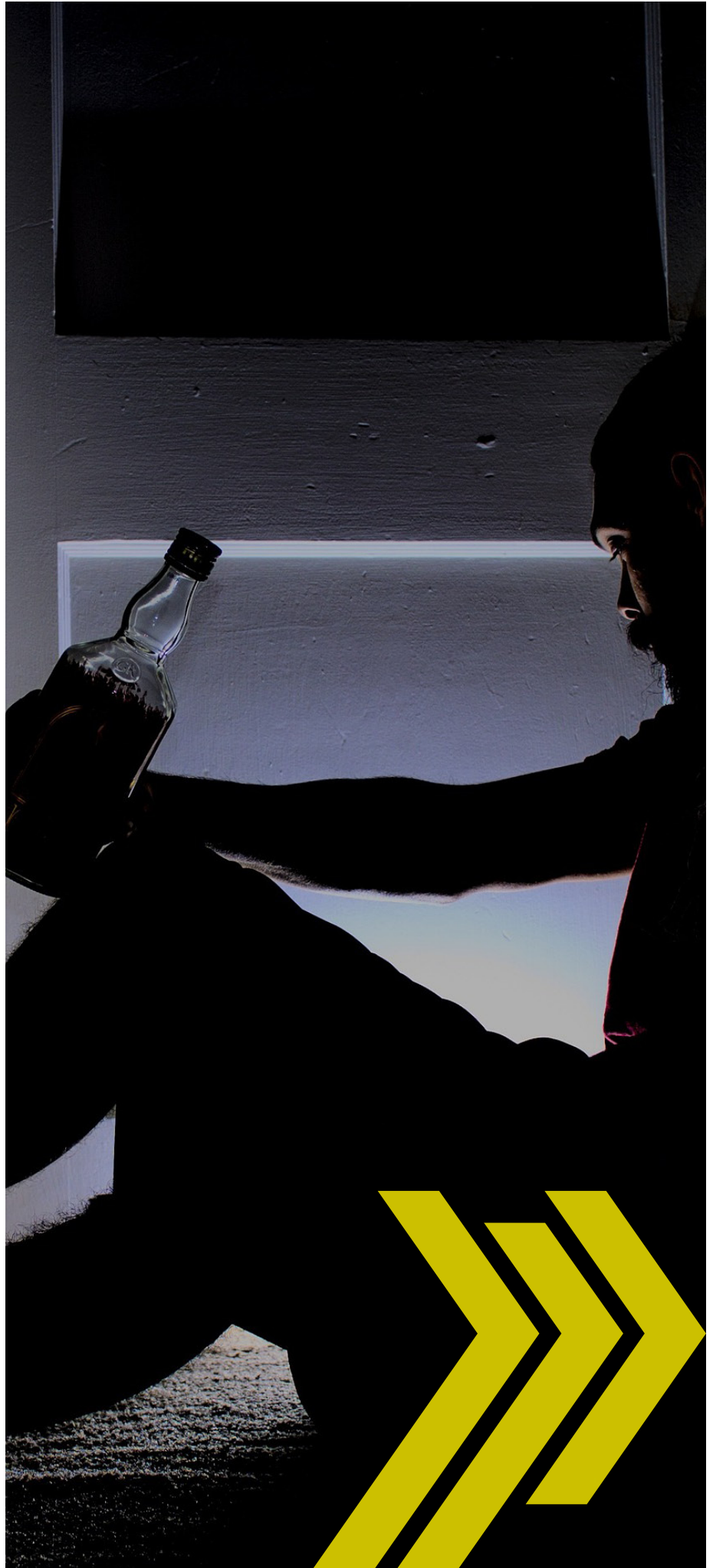
require the employer to continue to employ the employee until the final conclusion of the proceedings. The courts had this power before, but did not have to use it. Now they will be required to do so. In consequence, the employer will have to continue to employ the employee throughout inter-institutional proceedings and proceedings before the court of second instance. Similarly, where an action to declare an employment relationship ineffective or to reinstate to work is filed by employees who are under the special protection of the Labor Code (i.e. trade union activists, pregnant women, pre-retirement age employees or employees on parental or child rearing leave), the court, at the employee's



request, will at every stage of the proceeding grant interim relief by ordering continued employment until the final conclusion of the proceeding. The basis for the relief is to be the probability of the existence of a claim, and the court will be able to refuse to grant relief only if the claim is clearly unfounded.

The regulations provide that a decision to grant such relief is subject to enforcement. At the same time, a complaint may be filed against it with the court of second instance.

The new regulations also provide that the employer may request that a final order to grant interim relief be repealed only if he can show that the circumstances referred to in Article 52 § 1 of the Labor Code occurred after the relief was granted and that a change of the decision to grant relief is unacceptable. The said Article 52 § 1 of the Labor Code provides that an employer can terminate an employment contract without notice due to the fault of the employee in the event of: a serious breach of the employee's basic duties; the commission of a crime by the employee during the term of his/her employment contract, which makes it impossible to continue to employ him/her, if the crime is obvious or confirmed with a final judgment; the employee's culpable loss of the qualifications necessary to perform work in his/her position.



New regulations on bridging pensions as of 2024

Regulations amending the Bridging Pensions Act will go into effect as of 1 January 2024. As a result, early benefits will be available to those who began work in special conditions or of a special nature on 1 January 1999.

ZUS points out that bridging pensions are available to those who have performed work in harmful conditions. Work in special conditions is work that involves risk factors that with age are very likely to cause a permanent health impairment. Whereas work of a special nature requires extraordinary responsibility and exceptional mental and physical fitness.

Currently binding provisions of the Bridging Pensions Act grant early retirement to those who meet all of the following conditions:

- were born after 31 December 1948,
- performed work in special conditions or of a special nature for at least 15 years,
- have reached the age of at least 55 – for women or at least 60 – for men,
- were covered by social insurance (contributory and non-contributory periods) for at least 20 years – for women or at least 25 years – for men,
- prior to 1 January 1999 performed work in special conditions or of a special nature as specified in the Bridging Pensions Act (provisions applied from 1 January 2009) or in the Pension Act (provisions applied prior to 1 January 2009), for at least 1 day,
- after 31 December 2008 performed work

in special conditions or of a special nature (under the Bridging Pensions Act) for at least 1 day.

Also eligible for a bridging pension are those who did not perform work in special conditions or of a special nature after 31 December 2008, if as at 1 January 2009 they had the required 15 years of work in special conditions or of a special nature (as listed in the appendices to the Bridging Pensions Act) and meet the remaining conditions for the benefit.

The most important change in the regulations consists of removing from the Bridging Pensions Act the requirement to perform work in special conditions or of a special nature prior to 1 January 1999. It makes it possible for people much younger than those who currently collect the benefits to become eligible for a bridging pension. Future retirees will not have to prove that they performed work in special conditions or of a special nature before 31 December 1998. Those applying for a bridging pension could have begun to perform such work as late as after 31 December 2008.

As explained by ZUS, as a result of the change in regulations, eligibility for a bridging pension will be acquired by successive age groups performing work under the Bridging Pensions Act without the risk that they will not become eligible for early benefits only because they did not work in certain conditions prior to 1 January 1999. All the other conditions for being eligible for the benefit will still have to be met.



Minimum wage without extra pay for work in special conditions

Employee minimum wage is calculated without extra pay due for working in particularly uncomfortable or particularly harmful conditions, work involving great physical or mental strain or work that is particularly hazardous.

The changes introduced by the Act of 28 July 2023 the Act of 28 July 2023 on amending the Bridging Pensions Act and certain other acts (2023 Journal of Laws, item 1667) are already in force. The amending act also made changes to the Minimum Wage Act of 10 October 2002. It broadens the catalogue of wage components that are not included in the calculation of an employee's wage, by extra pay for work in particularly uncomfortable or particularly harmful conditions, work involving great physi-

cal or mental strain or work that is particularly hazardous due the employee on terms set out in separate regulations, collective bargaining agreement, another statute-based collective agreement, remuneration regulations, statute that sets out the rights and responsibilities of the parties to a work relationship, employment contract or cooperative employment contract. The change is significant when comparing the amount of employee wage with the current amount of minimum wage.

To recap, the Minimum Wage Act had previously provided that the following are not included in the calculation of an employee's wage: jubilee bonuses; retirement or disability severance pay; overtime pay; night work pay; seniority bonuses.



CEO's travel expenses can be claimed as tax-deductible costs

Expenses related to the CEO's travel between his place of duties and his place of residence where he performs his duties remotely, as well as other business travel, are incurred for purposes related to his management of the company, i.e. for the purpose of generating, preserving or securing the company's source of income.

This is the conclusion that arises out of an individual interpretation issued by the Director of National Tax Information in August 2023 (number 0114-KDIP2-2.4010.242.2023.3.PK). In the case that was the subject of interpretation, the company's CEO (partner) lives in United Arab Emirates (UAE) and makes and will continue to make regular air trips between Poland (where the company has its place of establishment) and his place of residence. In view of this, the shareholders meeting passed a resolution in which the company undertakes to reimburse the CEO for the costs of those trips. The shareholders meeting set a maximum amount for the CEO's travel in a financial year and the rules for reimbursing those costs. Each time the CEO buys an airline ticket he asks the airline for a VAT invoice showing the company as the buyer. In accordance with the resolution, the company only refunds an amount up to the price of an economy class ticket, any difference in the price of a higher class ticket is paid from the CEO's own, private funds. The same rules apply to foreign travel to take part in business meetings, fairs or conferences. Concerns arose as tax regulations excluded from tax-deductible costs expenses associated with unilateral performances for the benefit of partners or members of cooperatives who are not employees within the meaning of separate regulations, where the expenses incurred for the benefit of members of agricultural production cooperatives and other cooperatives involved in agricultural production are taxable insofar as they relate to activities subject to corporate income tax.

In this context, however, the tax authority noted that a company's unilateral performance for the benefit of its shareholder is one that is not

matched by a reciprocal performance from the shareholder for the benefit of the company. Thus considered unilateral performances are situations where a company makes a performance for the benefit of its shareholder without receiving any reciprocal performance in return, i.e. only one of the parties is entitled and the other is only obligated. Whereas in the case under consideration, this is not the situation, as there is a bilateral (reciprocal) performance: the performance to the CEO (partner) relates to specific activities he performs for the benefit of the company.

Moreover, Article 16 par. 1 point 38a of the CIT Act, which provides that tax-deductible costs do not include expenses for the benefit of members of supervisory boards, audit committees or decision-making bodies of legal persons, with the exception of remuneration paid out for the functions they perform, also does not apply in this case, as the management of a limited liability company performs an executive function and is not a decision-making body. This way the lawmakers do not exclude the ability to claim expenses other than remuneration incurred for the benefit of an executive body.

In consequence the interpretation finds that the expenses related to the CEO's travel between his place of duties in Poland and his place of residence in the UAE where he performs his duties remotely, as well as other business travel, were and will be incurred for purposes related to his management of the company, i.e. for the purpose of generating, preserving or securing the company's source of income.



New transfer pricing information templates published

↓ New electronic document templates have been published on the pages of the Ministry of Finance Public Information Bulletin: transfer pricing information relating to personal income tax - TPR-P(5) and transfer pricing information relating to corporate income tax - TPR-C(5). TPR Information may be submitted via the e-Declarations gateway, using the revised templates, as of 13 October 2023.

E-delivery broadened to include professions of public trust

↓ As of 10 December 2023 the requirement to use e-delivery will apply to more than 80 thousand offices, including all public administration organs and local government entities. E-delivery addresses will be required for those who perform professions of public trust, including notary publics



In short

and attorneys, as well as new business operators entered in the National Court Register (KRS). E-delivery is a service that makes it possible to send and receive correspondence electronically, with an effect equal to that of a return receipt registered letter. It should be noted that business operators registered in the CEIDG and KRS must have an e-delivery inbox.

New list of jobs prohibited for young workers

↓ A new decree on the list of jobs prohibited for young workers and on the conditions of their employment in some of these jobs went into effect as of 30 September. The decree adapts the regulations to the current standards for the performance of work by young workers. The Council of Minister's Decree of 19 June 2023 on the list of jobs prohibited for young workers and on the conditions for their employment in some of these jobs has been published in the Journal of Laws, item 1240.

New occupational health and safety regulations on spray painting work coming soon

↓ 10 January 2024 is the effective date of a decree that sets out the occupational health and safety requirements for: cleaning surfaces by abrasive blasting methods using devices with an open or closed flow of abrasive in a stream of compressed air, water or a mixture of water and compressed air; spraying surfaces with varnishes in liquid form using spraying devices, or spraying surfaces with varnishes in powder form using sputtering devices; thermal spraying of metal surfaces using arc, plasma and flame spray guns, including supersonic and detonation guns (see Journal of Laws, item 2159).

Consolidated text of regulations on opting out of PPK published

↓ The minister's of finance announcement of 27 September 2024 of the consolidated text of the minister's of finance decree on declarations of opting out of making contributions to employee capital plans has been published in item 2148 of the Journal of Laws. The decree includes a template of the declaration of opting out of making contributions to employee capital plans and a detailed scope of the data to be contained therein. The consolidated text includes the changes made in the minister's of finance decree of 1 November 2022 amending the decree on

declarations of opting out of making contributions to employee capital plans (Journal of Laws item 2357).

National experts posted to EU institutions partially tax-free

↓ 3 October 2023 was the effective date of regulations on waiving the collection of tax from so-called national experts for being posted to work at EU institutions (see Journal of Laws item 2091). The regulations apply to amounts received in connection with the experts' stay at the place of posting and reimbursement of the costs of travel to and from the place of posting at the start and completion of work at the European Union institution, if financed by the institution that posted the national expert. The amount waived cannot exceed the amount of daily and monthly per-diem allowances to which national experts are entitled under the internal regulations of the European Commission. The tax waiver applies to revenue earned from 1 January 2023 to 31 December 2025.

Limit of contributions to pan-European personal pension product in excess of PLN 21 thousand

↓ In accordance with the announcement of 19 September 2023 published in the Polish Monitor (item 1056) by the minister of



family and social policy on the limit of contributions to the sub-account of the pan-European personal pension product in 2023, the limit of contributions made to the sub-account of the pan-European personal pension product in 2023 is PLN 21 312.

New EU regulation on accounting as of 16 October

↓ The European Commission has published Regulation (EU) 2023/1803 of 13 September 2023 adopting international accounting standards. The regulation went into effect on 18 October 2023. It contains the consolidated text of all the standards adopted for accounting purposes, which will make it easier to use international accounting standards in effect in EU member states. Importantly, the regulation is binding in its entirety and directly applicable in all member states (does not require implementation). More on this on our website.

Central Pension Information Act already in effect

↓ 5 October was the effective date of the Central Pension Information (CIE) Act of 7 July 2023. Its purpose is to form Central Pension Information, which has been defined as a set of organizational and technical solutions that provide interested parties with access to information about their pension and use of electronic services, as set out in the Act. The CIE will provide users with aggregated information on their participation in a pension system made up of three pillars: public – consisting primarily of the universal system run by ZUS or KRUS; private employment-based, created or co-created by employers – consisting of accounts in Employee Capital Plans (PPK) and Employee Pension Plans (PPE); private individual – consisting of Individual Retirement Pension Accounts (IKE), Individual Retirement Protection Account (IKZE) and Open Pension Funds (OFE).

First CBAM reports in January 2024

↓ 1 October 2023 is the effective date of the first obligations for importers under CBAM (the Carbon Border Adjustment Mechanism), i.e. an EU mechanism for adjusting the prices of imported goods for the CO₂ emissions associated with their production. This means a need to monitor import transactions, calculate emissions in the price of the goods covered by the mechanism, and perform reporting obligations. Importers will have to file their first quarterly reports by the end of January 2024. Importantly, in the transitional phase they will have to report emissions embedded in their goods without the need to pay a

financial adjustment, which will leave time for the final system to be put in place. Registration of importers as “authorized declarants in the CBAM system” will begin on 31 December 2024. More on this in our alert.

Another large increase in fines as of January

↓ The government has already announced the minimum wage for 2024. It will first increase in January to PLN 4242, and then again in July to PLN 4300. The increase in minimum wage will bring with it a significant rise in the penalties imposed under the Penal Tax Code for tax crimes and offences. This also applies to penalties in the form of a fine. A penalty in the form of a fine may be imposed if the offender and the circumstances of the tax offence raise no doubts and there is no need to impose a more severe penalty. Currently the amount of such a fine can

range from PLN 360 to PLN 18 000. Whereas as of January 2024 it will be from PLN 422,40 to PLN 21 120, and as of July 2024 from PLN 430 to PLN 21 500. More on this in our alert.

New form PIT-8R to be filed by end of January 2024 on the way

↓ The Ministry of Finance has presented a draft of a new form for the annual declaration of lump-sum income tax (PIT-8AR, version 13). The declaration is filed by those who pay lump-sum personal income tax. The new form will apply to returns for 2023, which must be filed by 31 January 2024. As part of the modifications, the PIT-8AR form will be adapted to changes related primarily to the introduction of family foundations and inclusion in lump-sum taxation of income received from savings in a pan-European individual pension product.



Important interpretations and rulings

The same VAT rate on subscriptions and on gifts to subscribers

➔ Tablets or smartphones presented to new subscribers should not be taxed separately with VAT – the Court of Justice of the European Union ruled on 5 October 2024 (C 505/22). The provision of a gift constitutes a supply that is ancillary to the principal service of supplying periodicals, which falls within the concept of a “supply of goods for consideration”. It is not a disposal of goods free of charge. The CJEU found that a subscription to periodicals on the one hand, and the offering of a tablet or smartphone with a unit value of less than €50 for the purchase of a new subscription on the other hand, constitute a single whole. The subscription is the principal service, while the gift - an ancillary supply the sole purpose of which is to encourage the purchase of a subscription.

Purchase of protective eyeglasses by business operator is tax-deductible

➔ Where unbreakable, protective corrective eyeglasses are in fact necessary for the business operator to provide services as part of his business activities and are actually used only when working at heights and when using dangerous tools, for which the use of safety glasses is necessary, and due to a sight defect, especially made in a corrective version, then the costs of their purchase may constitute tax-deductible costs of non-agricultural business activities, provided that they are properly documented – says an individual tax interpretation of 29 August 2023 (0113-KDIPT2-1.4011.476.2023.1.KD).

ZUS premiums must be paid on building provided by employer

➔ Where a benefit consists of the provision of a residential building owned by the em-



ployer, the benefit should be included in the social security premium calculation base at the amount of the rent determined according to the rules and rates for communal housing in a given area, and in cities - in a given district - the Social Security Office (ZUS) explained in an individual interpretation (DI/100000/43/1227/2022). In the case under review, the company provided a newly hired employee with a residential building owned by the company, purchased especially for this purpose. In this case, the value of the rent in connection with the free benefit granted to the employee in the form of the right to live in a building owned by the company constitutes the employee's income from the employment relationship.

Family member not an employee from the perspective of ZUS

➔ In an individual interpretation issued on 17 April 2023 (WPI/200000/43/1186/2019) ZUS found that immediate family members of a person engaged in non-agricultural business activities, who live in the same household and who have concluded an employment contract with that person, are for the purposes of social security treated as associates, rather than employees of the person engaged in non-agricultural business activities. An exception in this regard is the conclusion with a juvenile member of the family (a person under the age of 18) living in the same household of an employment contract for the purpose of occupational training.

CALENDAR (most important dates)

- ✓ Payment of ZUS premiums for September 2023 - other premium remitters
- ✓ Payment for September 2023 of monthly advance for personal income tax and corporate income tax
- ✓ Payment for September 2023 of advances collected on employment income
- ✓ Payment for September 2023 by remitters of advances collected for income tax or lump-sum income tax
- ✓ Payment of personal income tax and corporate income tax advances for 3rd quarter of 2023
- ✓ Payment by a holding company representing a tax group of the tax advance collected for September 2023
- ✓ Payment of lump-sum tax if in September 2023 dividend income and other income from shares of profits of legal entities was spent inconsistently with the purpose specified in declaration (CIT-5)
- ✓ Payment of tax advance for September 2023 by real estate company (PIT-ISN and CIT-ISN)
- ✓ Payment for September 2023 of income tax on income from a fixed asset that is a building
- ✓ Payment for September 2023 to PFRON
- ✓ Payment of lump-sum tax on income from: hidden profits and non-business expenses - if in September 2023 there was a withdrawal, expense or benefit; change in the value of an asset - if an acquisition, transformation or contribution in kind was made in September 2023
- ✓ Payment of tax on benefits or assets transferred or made available by family foundation in September 2023



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- ✓ Payment of VAT for September 2023
 - ✓ Payment of VAT for 3rd quarter of 2023
 - ✓ Filing of VAT-8, VAT-9M, VAT-12 for September 2023
 - ✓ Transmission of SAF_V7M for September 2023
 - ✓ Transmission of SAF_V7K for September 2023 (record section) and for 3rd quarter of 2023 (declaration section)
 - ✓ Submission of recapitulative statement on VAT EU intra-Community transactions for September 2023
 - ✓ Filing by tax representative of VAT-13 for September 2023
 - ✓ Reporting of sugar tax for September 2023
 - ✓ Reporting of retail sales tax PSD-1 for September 2023
 - ✓ Submission to PFRON of documents on subsidies to disabled employee wages for September 2023



OCTOBER 2023						
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- ✓ Filing of VAT declaration relating to import procedure VIU-DO for September 2023
- ✓ Filing of VAT declaration relating to EU procedure VIU-DO for 3rd quarter of 2023
- ✓ Filing of VAT declaration relating to non-EU procedure VIN-DO for 3rd quarter of 2023
- ✓ Preparation in electronic form of local transfer pricing file for 2022 (for entities whose tax year is concurrent with calendar year)



- ✓ Filing of VAT-14 on output VAT due on intra-Community acquisition of engine fuels for October 2023



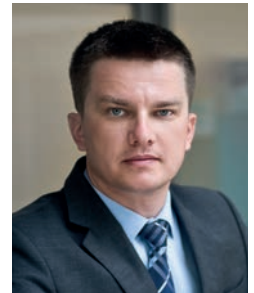
- ✓ Payment of lump-sum income tax collected in October 2023 on dividend income and other amounts from shares of profits of legal entities, and provision of CIT-7 to taxable persons
- ✓ Payment by acquirer of lump-sum income tax for October 2023
- ✓ Filing of declaration on amount of income from unrealized profits (PIT-NZ and PIT-NZS) for October 2023
- ✓ Filing of declaration on amount of income from unrealized profits CIT-NZ for October 2023 and payment of output tax indicated in the declaration



- ✓ Filing of INTRASTAT for October 2023



- ✓ Payment of ZUS premiums for October 2023 - remitters with legal personality
- ✓ Payment to PPK



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CALENDAR



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- ▶ tax, legal and financial advisory services,
- ▶ management advisory services and accounting,
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