

Time is running out to prepare and sign financial statements

I. 30 June is the deadline for preparing financial statements

At the end of June, the extended deadline for the preparation of financial statements for 2020 expires. The relevant regulations were published in the Journal of Laws of 29 March 2021 (item 572). Based on those regulations, the deadline was extended by three months (private entities except financial market entities, and non-profit organizations). For entities whose financial year is the calendar year, this meant that the reporting deadline was shifted from 31 March 2021 to 30 June 2021. If an entity has a different financial year, lasting, for example, from 1 March 2020 to 28 February 2021, it will have until the end of August 2021 to prepare the statements. The deadline for approving the financial statements (which is normally 6 months from the balance sheet date) and for submitting the report to the National Court Register (KRS) has also been extended. As a consequence, private companies and non-profit organizations whose financial year is the same as the calendar year will have to perform those duties by 30 September (approval) and 15 October (submission to the National Court Register), respectively. Regardless of the above, also extended to 31 July 2021 has been the deadline for PIT payers obliged to keep books of account to submit their financial statements to the Head of the National Tax Administration by means of electronic communication.

II. Financial statements and other documents to be filed electronically only

As required by applicable regulations, financial statements are prepared as at the date of closing the accounting books. The statements consist of such documents as: balance sheet, profit and loss account and additional information, which includes introduction and notes to the financial statements. Submitted (filed) along with the annual financial statements is also the audit report, if the statements were subject to audit, a copy of a resolution or a decision of the approving body on approval of the annual financial statements and distribution of profit or coverage of loss, and a report on operations if the entity is which are obliged to submit it. The financial statements with accompanying documents, as well as a statement on absence of the obligation to prepare the statements, may only be prepared and submitted to the National Court Register electronically.

At the end of June, the extended deadline for the preparation of financial statements for 2020 by entities whose financial year is the same as the calendar year expires. After that date, the managers of those entities will no longer be able to sign the statements without facing consequences.



III. The financial statements should follow the applicable structure

Whether they are submitted to the Financial Document Repository (via the RDF system) or via the S24 system, the financial statements should be generated as a single XML file that contains all the elements of the statements (balance sheet, profit and loss account, and additional information). The statements must comply with the structure published by the Ministry of Finance. A file that does not follow the published structures is not accepted by the system. Business operators applying the International Accounting Standards (IAS) are an exception - for them, the Ministry of Finance has not published a binding standard and logical structure of the statements. This means that they can choose the format and logical structure of the financial statements themselves or prepare the statements in an unstructured form. The electronic form (with no specific format requirements) is mandatory for the following other documents: report on operations; report on payments to the public administration; auditor's opinion/report on the audit of annual financial statements; report on operations of the capital group; parent company's report on operations; consolidated report on payments to the public administration.

IV. Going concern as the basis for preparation of financial statements

One of the most important considerations in preparing the 2020 statement given the pandemic is to properly assess the entity's ability to continue as a going concern. Going concern is a fundamental assumption in the preparation of financial statements. Accordingly, it is assumed that the entity will continue its business on a substantially undiminished basis in foreseeable future, without going into liquidation or bankruptcy, unless inconsistent with fact or law. If the going concern assumption is appropriate, assets and liabilities are recognized in the books and in the financial statements based on the assumption that the entity will be able to generate economic return on its assets and discharge its liabilities in the normal course of business. However, significant uncertainty as to the entity's ability to continue as a going concern is not sufficient reason not to prepare financial statements on a going concern basis.

V. Assessment of the ability to continue as a going concern is the responsibility of the entity's manager

To be certain that the going concern assumption is appropriate, the manager is required to consider very carefully the entity's ability to discharge its liabilities as they fall due, including many factors relating to current and expected profitability, debt repayment schedules and potential sources of alternative financing, which require detailed cash flow and profit forecasts. In the specific situation of social or economic crises, as e.g. economic slowdown or recession, including those caused by a pandemic, the manager assessing the entity's ability to continue as a going concern takes into account such events and circumstances as: operational (e.g. contingency plans, reorganization, etc.), regulatory (legal included), liquidity management and related risks (e.g., late payments, increased credit risk, etc.). These issues are addressed in detail in the Accounting Standards Committee's standard on „Going concern and non-going concern accounting”, which we described in an earlier alert.



VI. The statements must be signed on their due date

The financial statements with accompanying documents, as well as a statement on absence of the obligation to prepare the statements, may only be prepared and submitted to the National Court Register electronically. It is not possible to submit financial documents to the register in the paper form. Therefore, the statements must be signed with a qualified electronic signature or a trusted profile by the person responsible for keeping the books of account and by the head of the entity, and if the entity is managed by a body consisting of more than one person – by all the members of such body (which means that as a rule, the statements are signed by all members of the management board). A modification relating to the signing of financial statements which allows that action to be performed by only one member of a multi-member management board is still under preparation (draft UD154, at the assessment stage as of May). The financial statements should be signed by the due date of their preparation.

VII. Financial statements may no longer be signed after the deadline

As of 1 October 2018, the statements must be both prepared and signed electronically. Whether the qualified electronic signature or the trusted one is used, the signature date is added automatically. Therefore, financial statements cannot be signed after their due date without consequences. The persons who sign the financial statements must state the signature date and may not use proxies. As a reminder, the following persons qualify as entity managers obliged to sign the statements: management board members of a capital company (limited liability company and joint stock company); a natural person running a sole proprietorship; partners in charge of the company's affairs in a general partnership or civil law partnership; partners in charge of the company's affairs in a partnership or management board of such a company; general partners in charge of the company's affairs in a limited partnership or limited joint stock partnership; liquidators, receivers or administrators in restructuring proceedings; succession administrators; members of management bodies of other entities.



VIII. Penalties for failure to comply with obligations related to financial statements

Failure to comply with the reporting obligation, i.e. to file financial statements or to comply with the mandatory electronic form, is subject to a fine or restriction of liberty. This is clearly stated in Article 79 of the Accounting Act. The Fiscal Penal Code provides that the fine may range from 10 to 720 so-called daily rates. Their amount depends on the amount of the minimum wage and changes every year with the annual change in such minimum wage. Thus in 2021, the daily rates for fiscal offences will range from PLN 93.33 to PLN 37,333.33 (the minimum daily rate is 1/30 of the minimum wage, i.e. PLN 2,800, while the maximum daily rate is 400 times the minimum wage). This means that in 2021, the fine for failure to file financial statements or to comply with the obligatory electronic form may range from PLN 933.33 (10 times the lowest daily rate) to PLN 26,880,000 (720 times the maximum daily rate). Failure to submit an e-report to Head of the National Tax Administration may be punished with a fine just like a fiscal offence. Here, the fine is from 1/10 to 20 times the minimum wage, and may therefore range from PLN 280 to PLN 56,000 in 2021.

IX. The general meeting of shareholders may be held remotely

The financial statements should be approved by the end of June each year (if the company's financial year coincides with the calendar year). However, in 2020, exceptionally, the deadline for approval of the financial statements for 2019 is 30 September. The financial statements are approved by the approving body. In a joint stock company and a limited joint stock partnership, that body is the general meeting (AGM); in a limited liability company – the meeting of members; and in partnerships – the partners. Recently, holding the AGM has been significantly hindered due to epidemiological requirements (ban on assemblies). Therefore, one should remember that since the so-called „anti-crisis shield 2.0” came into effect, the Code of Commercial Companies provides for the possibility to hold meetings of members or, respectively, general meetings by means of electronic communication, as long as the company's articles of association or articles of association do not explicitly exclude such possibility. The decision to hold a meeting remotely is made by the body that convenes the meeting, that is, as a rule, the management board.



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