

BS&O ALERT



Information

The Parliament amended regulations on settlement of wage subsidies from the Guarant

Even before the end of this year, the rules of settlement and control of support granted to business operators and other entities from the Guaranteed Employee Benefits Fund in the form of wage subsidies under the anti-crisis shield will be changed.

Within the framework of another, already passed amendment to the Act on special solutions related to the preventing, counteracting and fighting COVID-19, other infectious diseases and the resulting crisis situations and to some other acts, the rules of settlement and control of support granted to business operators and other entities from the Guaranteed Employee Benefits Fund will be changed. Concerned here are subsidies to employee wages granted under the anti-crisis shield, which helped to protect workplaces during the pandemic. Business

operators and other eligible entities could avail themselves of benefits from the Guaranteed Employee Benefits Fund.

The Act adopted by the Parliament provides for clarification and supplementation of regulations relating to the settlement of benefits from the Guaranteed Employee Benefit Fund (FGŚP) for the protection of workplaces, granted in connection with the COVID-19 epidemic. Thus according to the new regulation, among other things, the director of provincial employment office may perform, during the period of benefit collection and for 3 years thereafter, inspections of the entity with regard to disbursement of funds from the Guaranteed Employee Benefits Fund for the payment of benefits as intended, and for this purpose may require presentation of any related documentation and request appropriate explana-



Starting from the new year, the time for correcting personal social insurance statements will be shorter

Starting January 2022, the period for submission of corrections to personal monthly reports and social insurance statements will be limited to 5 years. Thereafter, the right to correct statements will be reserved for the Social Insurance Institution (ZUS) only. Under the new regulations (Journal of Laws of 2021, item 1621), after expiration of the five-year period for submission of corrections to social insurance statements or personal reports, only ZUS will be authorized to make changes to the insurance holder's account. This applies to situations where, under a final court ruling or a final decision, the assessment basis for retirement, disability, sickness and accident contributions is changed. Currently, the payer may submit such corrections relating to multiple previous years. The amendment will limit to 5 years, running from the due date of the contribution, the possibility of submitting corrections to documents (social insurance statement and personal monthly report) by the payer of contributions. The running of that 5-year period will not be affected by circumstances suspending or interrupting the running of the limitation period for dues on account of contributions.

Five years after the date when the contributions settled in the return and report became due, corrections to the settlement documents will be made ex officio by ZUS only on the insurance holder's account. Any resulting overpayment on the insurance holder's account will not be refunded; instead, it will be credited to the Social Insurance Fund (FUS). On the other hand, if a debt arises as a result of the correction after the lapse of 5 years, ZUS will not be able to claim dues on account of contributions.

The 5-year period will be extended if the dues on account of contributions subject to correction are not time-barred under the Act on social security system.

The new regulations limiting the possibility of making corrections will apply to settlements made from 1 January 2022. Instead, payers will be able to make corrections to documents submitted for periods ending no later than 31 December 2021 under the current rules. However, this possibility will remain open for no longer than until 1 January 2024. After that date, all corrections, regardless of the period to which they relate, will be made pursuant to the new regulations only.



According to tax authorities, subsidies to employees' meals is subject to taxation

An employer who subsidizes employees' meals should withhold income tax on such benefit, according to a tax ruling issued in September 2021.

The amount of subsidies to the meals of employees with higher energy expenditure constitutes their taxable income on account of a gratuitous benefit, on which the employer - as remitter - is obliged to calculate, collect and remit to the appropriate

tax office an advance income tax payment, as Director of the National Revenue Information Services stated in a tax ruling of 17 September 2021 (Ref. 0113-KDIPT2-3.4011.514.2021.4.NM).

From case description it follows that the employer partially subsidizes meals for blue collar workers of certain departments whose energy expenditure is higher.

The meals are delivered by an external catering company. Each meal delivered is assigned to a specific employee (labeled with the employee's name). To receive a meal on a given day, the employee has to order it via the external company's dedicated online platform, whereby the order is assigned to the employer as the ordering entity and is included in the invoice issued. Employees are entitled to a daily limit (any unused limit is forfeited), and the rest of the price is deducted monthly from their salary. The subsidy is not linked to overtime work: eligible employees are entitled to receive it regardless of their working hours on a given day (as long as the employee is at work on that given day). The employer is not obliged by law to provide the employees with meals, the financing (subsidy) is voluntary. Given the facts as described above, the tax authorities have found that the cost of the meals must be borne by employees regardless of whether they are at work or at home. Therefore, the value of the meal subsidy is an expense incurred by the employer in the interest of the employee and thus constitutes a benefit for the employee who does not have to bear the full cost of the meal (which would need to borne anyway) during working hours. Moreover, the benefit is measurable and attributable to the employee individually, and the amount of the meal subsidy is fixed (fixed limit). Thus, the employer can attribute the cost incurred directly to a specific employee.



From January 2022, there will be changes to sick pay provisions

Starting from the new year, a delay in the payment of contributions by the business operator will no longer prevent the employee from receiving sick pay. Also changed will be the amount of benefit for the period of hospitalisation, and the period when the benefit is paid after termination of insurance. From 1 January 2022, an important change will enter into force with regard to voluntary sickness insurance, which covers, among others, persons involved in own business activity. From the new year, the insurance will not cease due to a failure to pay contributions on time. It means that business operators will be eligible to receive sickness insurance benefits also if they pay contributions after the deadline. They will no longer be required to submit a request to ZUS for consent to pay contributions after the deadline. Each year, ZUS received over 150 thousand of such requests.

The new regulations will make it possible for persons unable to work in the period for which they are in arrears with the payment of contributions amounting to over 1% of the minimum wage (PLN 30.10 in 2022) to acquire the right to the benefit. The right will be acquired after the debt is paid off. However, if they fail to settle the debt within 6 months from the day on which the right to the benefit arises, the right becomes time-bar-

red. Instead, a debt not exceeding 1% of the minimum wage will not prevent payment of the benefit.

Also the hospitalization benefit will be higher. Currently, the sick pay for a period of hospitalization is, as a rule, 70% of the assessment basis for that benefit. Starting from the new year, monthly sick pay will be due in the amount of 80 per cent of the assessment basis. Another change concerns determination of the benefit assessment basis. It will no longer need to be determined anew if there was no break between benefit collection periods (regardless of the benefit type) or if the break was shorter than one calendar month. Currently, the benefit assessment basis is calculated anew if the break between benefit collection periods is at least 3 calendar months.

Under the new regulations, sick pay after insurance termination will be available for up to 91 days. This rule will not apply to tuberculosis patients, persons unfit to work during pregnancy and unfit to work having undergone the necessary medical examination of candidates for donors of cells, tissues and organs and the procedure of cell, tissue and organ collection. A person who collects the sick pay for the maximum period and remains unable to work will be eligible to apply for rehabilitation benefit, as under the current regulations.



In short:

↓ There will be clarifications to investment fund within Estonian CIT

The Ministry of Finance announces the commencement of tax consultations on draft clarifications regarding the fund for investment purposes. Concerned here a new model of tax settlement of investment expenditures by recognizing them as tax deductible costs even before the investment is launched (so-called super depreciation), operating under the so-called Estonian CIT as an alternative solution to the lump-sum tax on corporate income. Within this solution, the taxpayer is offered the option of creating a special investment account. Write-offs to that account increase tax costs and the-

refore reduce taxable income.

↓ Consultations on the new structure of JPK_VAT are coming to an end

At the end of October, the Ministry of Finance published opinions, sent in by 31 July 2021 as part of tax consultations on the new structures of JPK_VAT with return accompanied by authorization to process personal data. The consulted changes relate to amendments of the goods and services tax regulations, which entered or are due to enter into force in the period from 1 July 2021 to 1 January 2022. The new structures JPK_V7M and JPK_V7K structures will take into account, among other things, implementation of VAT e-commerce

package, as well as additional accelerated deadlines for VAT refund (15-day deadline resulting from the Cashless Taxpayer Program and 40-day deadline resulting from assumptions of the National e-Invoicing System).

↓ A new version of the VAT-REF tax form has been published

Due to amendment of the Regulation of the Minister of Finance, Funds and Regional Policy on applications for refund of value added tax charged in a European Union Member State other than the Republic of Poland starting from 1 July 2021 with regard to the special VAT refund procedure (VAT-Refund), a new version of the VAT-REF form (5) has been published in the



e-Deklaracje [e-Statements] tab, which takes into account amendments to the VAT Act related to introduction of the VAT e-commerce package.

↓ **New excise records will not be used until 1 January 2023**

The Parliament passed a bill amending the Act on excise tax as well as the Act amending the Act on excise tax and some other acts, which postpones the launch of electronic keeping of records and other documentation relating to excise goods and excise marks until 1 January 2023. Until that date, the records and other documentation can be kept under the existing rules.

↓ **The tax remitter is obliged to correctly state the employee's NIP or PESEL**

The Ministry of Finance reminds of the tax remitter's obligation to enter the correct Tax Identification Number NIP / Personal Statistical Number PESEL of the taxpayer (employee) in the PIT documents. Correct entry of the employee's NIP/PESEL makes it possible: for the tax office to generate a tax return and to release it to the employee within the Twój e-PIT [Your e-PIT] service on podatki.gov.pl; for the employee to

log in to the Twój e-PIT service using his/her PESEL or NIP tax data; to file the tax return using e.g. the free e-Deklaracje [e-Statements] system available on podatki.gov.pl; for the employee to use the available reliefs and deductions and to receive tax overpayment refund.

↓ **Starting December, higher limits of extra money earned in addition to disability or retirement pension**

Under the Act on retirement and disability pensions from the Social Insurance Fund, the amount of such pension due may be reduced or the right to receive it may be suspended altogether if the recipient earns additional income above a certain threshold amount, which affects pension rights. From 1 December 2021, the limits will be higher compared to the previous quarter. Gross earnings of up to PLN 3960.20 per month in December 2021 and in January and February 2022 will not result in reduction of the retirement or disability pension.

↓ **Qualified signature using the SHA-1 algorithm remains available only until the end of 2021**

From 1 January 2022, there will be changes regarding signatures using the SHA-1 algorithm. JPK, CUK and ALK files signed with a qualified signature using the SHA-1 algorithm will be available for submission via the JPK Gateway until the end of

2021 only. From 1 January 2022, a file submitted via the JPK Gateway will need to be signed with a qualified signature using the SHA-256 algorithm. The rules for sending files signed with a trusted profile or authorization data remain unchanged. The change of the SHA-1 to SHA-256 algorithm does not require an update of the qualified signature itself. The Ministry of Finance therefore requests users to update or reconfigure their signing software (e.g. to change the hash function from SHA-1 to SHA-256 in the signature parameters) by the end of 2021.

↓ **The State Labor Inspectorate (PIP) wants authorization to convert civil law contracts into employment contracts by way of decisions**

The State Labour Inspectorate (PIP) seeks authorization to convert - by way of an administrative decision - a civil law contract (contract for specific task, commission contract) or a B2B contract (between a self-employed person and a company) into an employment contract. It is unclear, however, whether the Parliament will support this idea. A similar bill has only recently been rated as unsatisfactory by the government. Currently, if PIP believes that an employee working under a commission contract actually performs work typical of a full-time job, it may intervene with the employer or take the case to court.

Rulings and Interpretations:

Employee's low qualifications are no proof that the contract is merely an apparent one

➔ As follows from a recently published justification, the Regional Court in Lublin, in its judgment of 17 June 2021 (Ref. III AUa 348/21) found that the desire to obtain social insurance benefits as a motivation for taking up employment is no proof of an intention to circumvent the law. The same is true of other objectives set by persons entering into employment contracts, such as e.g. the desire to gain means of support. In the case in question, the Social Insurance Institution argued that employment of a marketing manager was fictitious and only aimed at that person's acquisition of rights to social insurance benefits. The circumstances that supposedly indicated such situation included the employee's low qualifications, exorbitant salary and absence of a marketing department at the company concerned.

Non-deducted company loss may be deducted after dissolution of the Tax Capital Group (TCG)

➔ The Minister of Finance issued an interpretation regarding calculation of 5 consecutive tax years for the purpose of accounting by companies for losses incurred and not settled in years preceding the first tax year of TCG. The general interpretation concerns Article 7 clause 5 of the Corporate Income Tax Act. According to the interpretation, the period of the next five consecutive tax years for the purposes of accounting for losses incurred by a company prior to joining a Tax Capital Group does not include

tax years in which the company was member of such group. Read more in our tax alert.

Lack of an invoice does not deprive the taxable person of the right to deduct the resulting VAT

➔ Except in cases of attempted fraud or abuse, if transactions actually occurred, the taxable person is entitled to deduct input VAT without producing the relevant invoice - as the Provincial Administrative Court in Bydgoszcz stated in its judgment of 5 May 2021 (Ref. I SA/Bd 44/21). As the Court explained in its justification, the authority may not deprive a taxable person of the right to input tax deduction on the grounds of failure to enclose challenged invoices with the case file, as long as the substantive conditions for the right to input tax deduction are met and the authority is in possession of invoices issued by that taxable person's contractors indicating the actual purchase of specific goods and services. Read more in our tax alert.

An arrangement between the investor and a trade union is not a source of labor law

➔ An arrangement concluded between the investor intending to acquire shares in a company whose shareholders are employees and company trade union organizations operating in that company does not constitute a source of labor law as it is not based on a statute - as follows from Resolution of seven Supreme Court justices of 27 October 2021. (Ref. III PZP 1/21). However, the Court did not take a stance on whether in this situation individual employee claims may be derived from such an arrangement.

CALENDAR (most important deadlines)

- ✓ payment for October 2021 of the monthly PIT and CIT advances
- ✓ payment for October 2021 of income tax withholdings on revenues under the employment relationship
- ✓ payment by the parent company representing a tax capital group of tax advance withheld for October 2021
- ✓ payment of lump sum CIT-5 due
- ✓ payment of tax advance for October 2021 by a real estate company/real estate company's tax representative (PIT-ISN and CIT-ISN)
- ✓ contribution to PFRON for October 2021



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- ✓ payment of VAT for October 2021
 - ✓ filing of VAT-7, VAT-8, VAT-9M, VAT-12 returns for October 2021
 - ✓ submission of JPK_V7M for October 2021
 - ✓ submission of JPK_V7M file for October 2021 (records)
 - ✓ filing of VAT-13 return by the tax agent for October 2021
 - ✓ submission to PFRON of documents relating to subsidies to disabled employees' remuneration for October 2021
 - ✓ settlement of sugar tax due for October 2021
 - ✓ settlement of retail tax due for October 2021



CALENDAR



- ✓ submission to PFRON, by disabled persons conducting business activity, of the request for reimbursement of retirement and disability pension contributions paid for October 2021
- ✓ submission (by electronic means) to Head of the National Revenue Administration of the TPR-C transfer pricing information whose deadline for filing expired in August 2021.
- ✓ filing (by electronic mean) with the tax office a statement on preparation of the local file of transfer pricing documentation, whose deadline for filing expired in August 2021.



- ✓ payment of lump-sum income tax withheld in November 2021 on dues paid to a foreign legal person
- ✓ payment of lump-sum income tax withheld in November 2021 on revenues from dividends and other revenues on account of participation in the profit of legal persons, and provision of CIT-7 information to taxpayers
- ✓ payment by the acquiring company of a lump-sum tax on income arising in November 2021
- ✓ filing of PIT-NZ and PIT-NZS returns on income from unrealized profit for November 2021, and payment of tax under such returns
- ✓ filing of CIT-NZ return on income from unrealized profit for November 2021, and payment of tax due under such return



- ✓ payment of ZUS contributions for October 2021 - natural persons paying contributions exclusively for themselves
- ✓ submission of INTRASTAT notification for November 2021



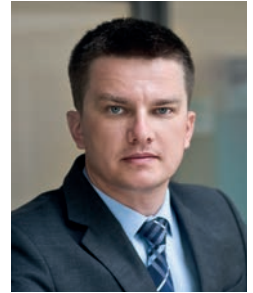
- ✓ payment of ZUS contributions for November 2021 by other payers (except for natural persons who pay contributions for themselves only, as well as budgetary units and local budgetary establishments)
- ✓ payment to PPK for November 2021



CALENDAR



DECEMBER 2021						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



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- ▶ management advisory services and accounting,
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