

BS&O ALERT



15 February was the publication date of a draft of amendments to the Labor Code and certain other acts meant to incorporate into the Labor Code the provisions of the EU Work-Life Balance Directive (Directive 2019/1158) and Directive 2019/1152 on transparent and predictable working conditions in the European Union (UC118). The amendments are to go into effect as of 1 August. In this BDO Alert we focus on these amendments.

Information

New rules for the conclusion of probationary period contracts

The amendments will change the rules for the conclusion of probationary period contracts. It will also no longer be possible to conclude another such contract if three years have passed since the previous contract. This will eliminate the conclusion of such contracts with the same person for the same position. Under currently binding provisions of the Labor Code, an employment contract for a probationary period may precede a contract for an unspecified time, a fixed term contract, a contract for the time of performance of a specified task or a substitute contract. It cannot be concluded for longer than 3 months, but the employer can reduce its term. A probationary period contract may be concluded again with the same employee only if it pertains to employment in a different position or with different tasks that require an assessment of the candidate's skills, or if 3 years have passed since the expiration of the previous such contract. The amendments will change those rules. After the change in contracts concluded for 3 months, the parties to such contracts will be able to in a probationary period contract agree that its

duration is extended by the period of annual leave or another excused employee absence. This is not, however the only change. The period for which the contract will be concluded will depend on the period of the contract to be concluded after the end of the probation period. Under the new regulations, the period of probation will not exceed: a month - if the intended contract of employment is to be concluded for a fixed term of less than 6 months; or two months - if the contract of employment is to be concluded for a fixed term of 6 months, but less than 12 months. If the intention is to conclude a contract of employment for an unspecified time, it will still be three months. Irrespective of the above, it will still be possible to extend the probationary period contract by a maximum of one month if justified by the nature of the job. A renewal of the probationary period contract with the same employee will only be possible if the employee is to be employed in order to perform a different type of work (irrespective of how long it has been since the previous probationary period). With regard to probationary period contracts, the new regulations provide for a clear requirement to stipulate the duration and terms of the contract, including the conditions for its extension by the period of annual leave or another excused absence, or its renewal by no more than a month.

New components of employment contracts

As of August, employers will be required to provide much more information to the employees with whom they conclude contracts. A change will also be made in the mandatory components of employment contracts. Failure to provide information will be punishable by a fine of PLN 1 thousand to 30 thousand. The draft amendments to the Labor Code provide for changes in the mandatory (required) components of employment contracts. In addition to identifying the parties to the employment relationship, the contract will also have to contain the registered place of business or residence address of the employer. Under the new regulations, it will be possible to have one or various places of work. It will also be possible for the employee to determine his own place of work if he has no fixed place of work. There is also the “day” of commencement of the employment relationship instead of the current “date” of commencement. This means that after the amendments, the start date will have to be identified as a specific calendar day.

The Code will also clearly state that the employment relationship is commenced on the day specified in the contract as the day of commencement, and if no such day has been specified – as of the day of contract conclusion.

Changes will also be made in the written information the employer will have to provide to the employee in connection with concluding the employment contract. It is to include such additional components as: the length of the employee’s standard working day and week; the work breaks, as well as the daily and weekly periods of rest to which the employee is entitled; the rules that govern overtime work and its remuneration; any arrangements for shift changes (in the case of shift work); the rules that govern transfers between places of work (if more than one place of work); the employee’s right to training provided by the employer (including information on the number of training days per calendar year and on the employer’s training policy); the name of the social security institution that receives the relevant social insurance premiums along with information about the protection provided by the employer (the employer will have 30 days from the employee’s commencement date to provide the latter information).

Importantly, failure to inform the employee about the terms of his employment or changes thereto by the specified deadline (which is to be shortened: it has been a month, after the changes it will be no later than the effective date of the changes) will be punishable by a fine of from PLN 1000 to 30 000.

There will also be a new solution. Once a year employees will have the right to apply to their employer for a change in the type of work, in the type of employment contract to a contract for an unspecified time or to full time employment. The employer will have a month to respond and provide reasons for his decision, and if possible, the employer should grant the employee’s request. Failure to respond will be punishable by a fine.



Changes in annual leave and time off work

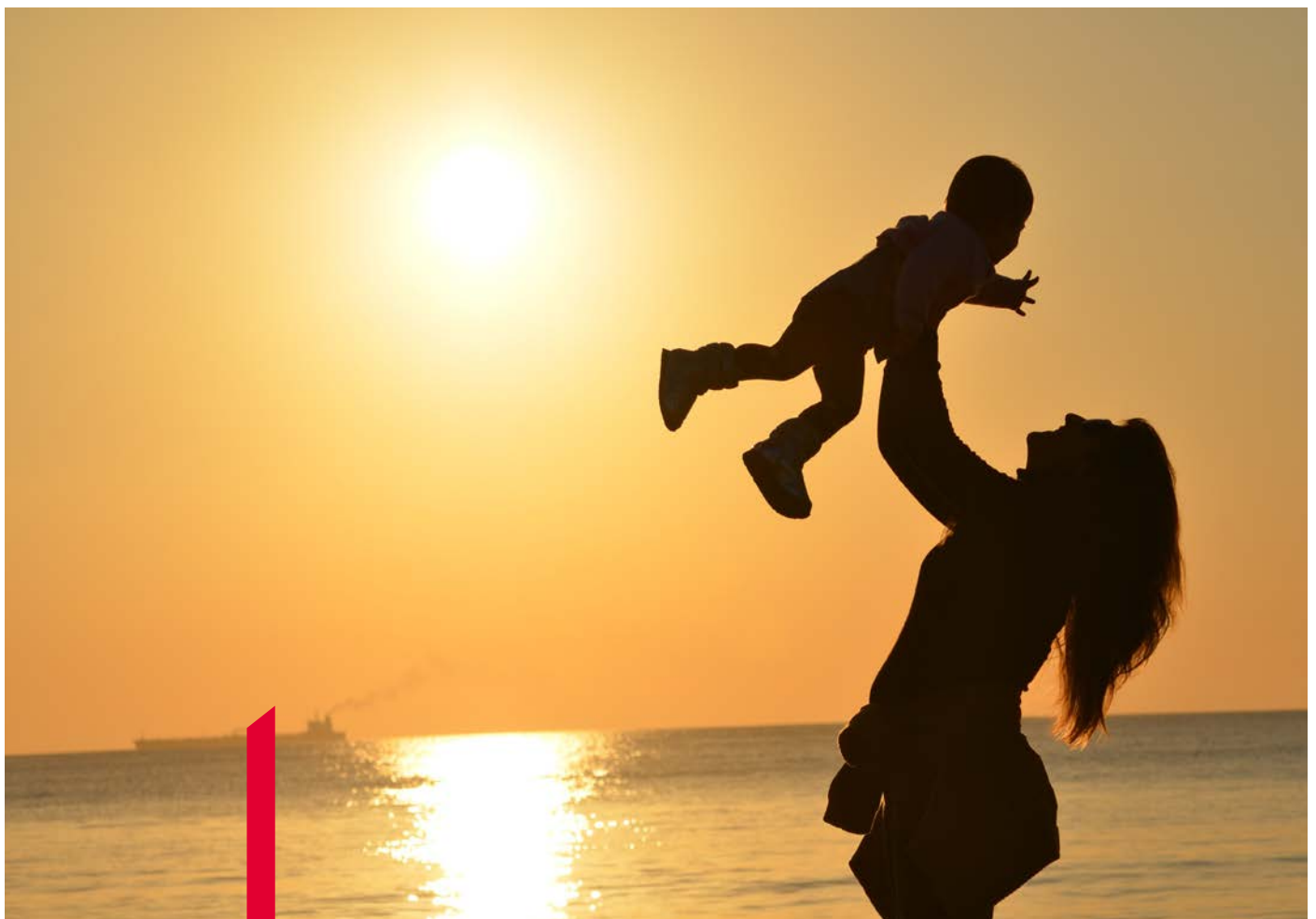
The amendments to the Labor Code that are to become effective in August will change the rules that apply to parental leave. There will also be a new carer's leave and time off to be used in the event of a force majeure.

The amendments extend parental leave from 32/34 weeks to 41/43 weeks (depending on the number of children born). Importantly, the mother will not have to be employed on the day of birth in order to qualify for the leave. After the changes it will no longer be possible to transfer a portion of parental leave onto the other parent (9 weeks), which is meant to force fathers to use this option more often. There will, however, be a change in the period during which fathers will be able to use the option. Instead of the current 2 years it will only be the first 12 months after the child is born. Maternity allowance for the period of parental leave will amount to 70% of the calcula-

tion base (currently it is 100% for the first 6 weeks and 60% for the remainder), and if within 21 days from the birth the employee applies for the entire parental leave, then she will be eligible for 81.5% of the allowance throughout the entire period of maternity and parental leave (as opposed to 80% right now).

The amendments will also introduce a new type of leave: carer's leave. Carer's leave is to be an additional right of up to 5 days. It is to be used to provide personal care or support to relatives who require significant care or support for serious medical reasons. This leave will, however, be unpaid.

There will also be time off on account of a force majeure, amounting to 2 days or 16 hours per year to be used in urgent family matters caused by an illness or accident. During such time off employees will retain the right to 50% remuneration.



Flexible forms of work performance

As of August 2022 the Labor Code will regulate remote work. Parents of children under 8 will be able to request remote work on their own. Employer's refusal will have to be justified.

Remote work will become a permanent Labor Code solution. Remote work will be work performed in whole or in part at a place indicated by the employee and agreed with the employer, including at the employee's residence address, in particular with the use of means of direct remote communication. Most importantly, in the case of remote work there will be no requirement of regular performance or of reporting work results.

The amendments also require the employer to provide the employee with the necessary work materials and tools and to cover the related costs, such as electricity and the necessary telecommunications services. The employee will be able to use his own equipment for which he will be entitled to a cash equivalent. The employer will have the right to monitor the performance of remote work by the employee.

Another important change comes in the regulations that make it possible to request remote work, flexible work hours or part-time work by parents who care for children under the age of 8 and those who care for relatives who require significant care for serious medical reasons. Employer's refusal to permit such flexible work will have to be justified.

The amendments will also permit employees to be employed or perform work on another basis for another employer. They will, however, permit employers to establish conditions for combining positions. To do so, the employer will have to have objective reasons relating to health and safety, the integrity of the public service, the protection of business

confidentiality or the avoidance of conflicts of interests. The new ban on preventing parallel employment will not apply in the presence of a non-compete agreement.



Sobriety checks



Employers will get the tools to in justified cases check if the employee is sober and not under the influence of other substances. If such cases are discovered, the employer will be able to reprimand the employee. In justified cases, employers will be able to implement preventive testing of employees for the presence of alcohol or similar substances in their bodies. This will be possible if necessary to protect certain goods, to test employees for sobriety or for the presence of similarly acting substances. The new regulations also set out the rules for the performance of such tests.

Where an employee is found to be under the influence of alcohol or another similar substance, the employer will be required to prevent the employee from performing work. The same will apply if there is a reasonable suspicion that the employee has come to work under the influence of a substance that acts in a manner similar to alcohol. At this time, this requirement only applies in situations when there is a reasonable suspicion that the employee has come to work after having consumed alcohol or has consumed alcohol at work.

Changes will also be made in the list of situations that justify employees being disciplined with a warning, reprimand or a cash fine, to include cases where the employee comes to work under the influence of alcohol or another similar substance or consumes such a substance at work.

In short:

↓ Provisions that extend 2021 reporting deadlines have been published

The minister's of finance decree of 7 March 2022 amending the decree on setting other deadlines for the fulfillment of recording requirements, as well as for the preparation, approval and filing of reports or information with the relevant register, entity or authority, has been published in the 2022 Journal of Laws, item 561. The new provisions went into effect on 10 March and extend the 2022 deadlines for the preparation, approval and filing of the financial statements of: private sector entities (excluding

those supervised by the KNF – operating on the financial market) and non-government organizations – by 3 months; public sector entities – by 1 month; personal income tax taxable persons who keep books of account (with respect to the filing of financial statements with the Head of KAS) – by 3 months.

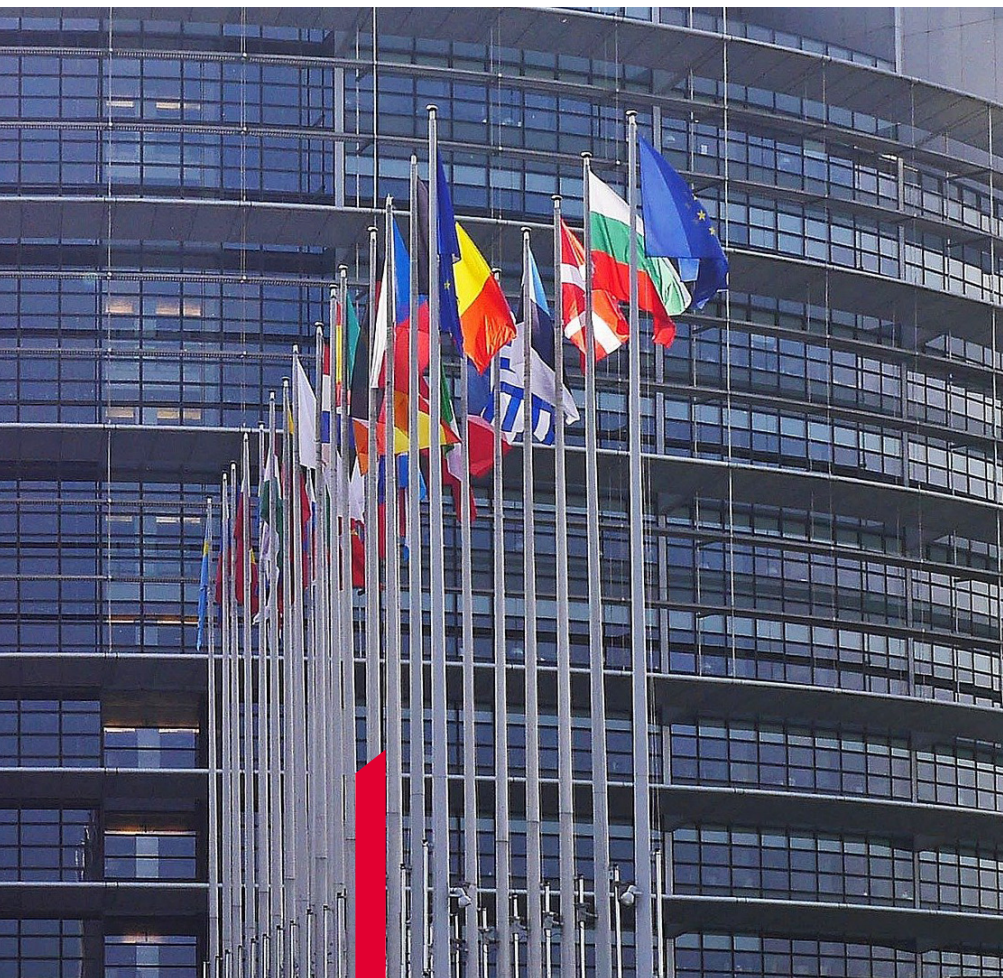
↓ Split VAT payment will stay with us until the end of February 2025

Poland has received the EU's consent for the application of the mandatory split payment mechanism (MPP) with respect to certain goods and services (Appendix No. 15

to the VAT Act) up until 28 February 2025. The derogation decision will be adopted by the Council of the European Union in March 2022. As a result, the Ministry of Finance has announced that as of 1 March 2022 Polish regulations continue to be in effect unchanged. Mandatory split payment applies when the value of the transaction listed on an invoice exceeds PLN 15 thousand or its foreign currency equivalent, and when the buyer of the goods or services from Appendix No. 15 to the VAT Act is a trader (taxable person). More on this on our website.

↓ Ministry of Finance has updated country-by-country reporting information

The Ministry of Finance has published a new version of its "Directory" that contains answers to most frequently asked questions on country-by-country reporting. As stated by the ministry, in the fifth version of the "Directory" (entitled "Country-by-country reporting, 5th extended edition" it added answers to the questions contained in the fourth edition (from December 2020), as well as new questions asked by taxable persons. The Directory contains a total of 34 questions and answers. The deadline for the filing of CbC-P is 31 March and applies to information for 2021. More on this on our website.



↓ Eligibility to use investment fund may be lost for three years

The Ministry of Finance has updated its tax explanations from 21 January 2022 on corporate income tax accounting of an investment fund that serves as an alternative to the so-called Estonian CIT. Among others, the ministry explains that if in the course of a tax year a taxable person uses the fund for expenses inconsistent with its purpose, he will lose eligibility to make tax-deductible contributions on terms specific to the fund for a period of 3 tax years, but no less than 36 months. The period of 3 tax years is counted from the beginning of the year following the year in which the investment fund

conditions were breached. More on this in our tax alert.

↓ This is the first month with new health insurance premiums

The deadline for the first payment of health insurance premiums calculated using the new rules by traders taxed on the tax scale or with flat-rate tax is in March. For the first time the premiums will be calculated on the taxable person's actual income. Importantly, as we have already reported, the base for the calculation of the premium for February 2022 due on 21 March (20 March is a Sunday) is not the taxable person's income from February, but from January 2022. The premium is calculated

as 9% of the income less ZUS premiums for taxable persons taxed on the tax scale, and as 4,9% of such income for those taxed with flat-rate PIT.

↓ Annual report must include information about the entity's impact on climate

As per the recommendations of the European Securities and Markets Authority (ESMA) (and at the same time of the Polish Financial Supervision Authority KNF), one of the priorities when auditing annual reports will be whether the financial statements consider climate related risks. Irrespective of the above, issuers, especially those from the highest impact sectors, should consider disclosing management climate risk assessments. In the context of climate in financial reporting, irrespective of ESMA's guidelines, attention should also be drawn to the draft Corporate Sustainability Reporting Directive, which concerns three areas: the environment, social matters and management matters.

↓ Double calculation of tax advances moved to PIT Act

Double calculation of tax advances, i.e. using the methods applicable in 2021 and those introduced by the so-called Polish Deal, has been moved from the minister's of finance decree to the PIT Act. There are also new regulations on supporting companies



that employ the disabled and on filing PIT-2. Based on the new regulations, tax remitters will reduce the advance by 1/12 of the standard deduction (i.e. PLN 425) also in situations when a PIT-2 is filed in the course of the tax year and not only before the first salary payment in the tax year. The amendments have been published in item 558 of the 2022 Journal of Laws and went into effect as of 10 March.

↓ **Changes in transfer prices that had been consulted since December have been published**

The minister's of finance decree of 22 February amending the decree on transfer prices with regard to personal income tax has been published in the 2022 Journal of Laws, item 521. An identical decree relating to CIT has been published in item 522. The change has to do with adapting the regulations to the solutions introduced by the Polish Deal. The new regulations pertain to controlled transactions involving the transfer of hard-to-value intangibles covered by an advance pricing agreement. The regulation extends the scope of the provision by the investment agreements and tax agreements introduced

by the Polish Deal. The new decrees went into effect as of 5 March 2022.

↓ **Ministry of Finance has updated regulations on accessing the ministry's services**

5 March 2022 was the effective date of the minister's of finance decree of 24 February 2022 amending the decree on the electronic transmission of tax books and on the technical requirements for the electronic data media on which such books may be stored and transmitted (2022 Journal of Laws, item 529). The changes relate to PIT-28, PIT-36 and PIT-36L, PIT-37, PIT-38, PIT-39 and PIT-40A. In this case, changes have been made in the numbers of the items from which the taxable person draws the amount of revenue when logging into

the services provided by the ministry.

↓ **ZUS will help companies that encounter problems with paying premiums due to the war**

ZUS has stated that premium remitters who as a result of the war in Ukraine have problems with the timely payment of insurance premiums can use the payment assistance offered by ZUS. The following forms of assistance are available: premium due date deferral or payment of arrears in instalments. In addition, amounts due may be waived after statutory conditions are met. Support may be obtained from a ZUS relief and waivers advisor, who will explain the assistance offered by ZUS. The advisor will assist with completing the application and with gathering the necessary documentation.



Important rulings and interpretations:

Board member responsible for payment of tax on VAT invoice

➔ The VAT Act indicates that a legal person, organizational entity without legal personality or natural person that has issued an invoice showing the amount of tax is required to pay that tax. A company board member is responsible for the resulting tax liabilities on terms similar to other cases of responsibility for the liabilities of the company – the Supreme Administrative Court stated in its ruling of 2 December 2021 (case file III FSK 4365/21). In a proceeding relating to the responsibility of a third party no assessment is made of whether the determination of the amount of the taxable person's tax arrears was valid. Such a proceeding is no place for undermining a decision that defines or determines the amount of a tax liability, or the amount of tax arising out of a tax return filed by the taxable person – the Court explained in the reasons for its ruling.

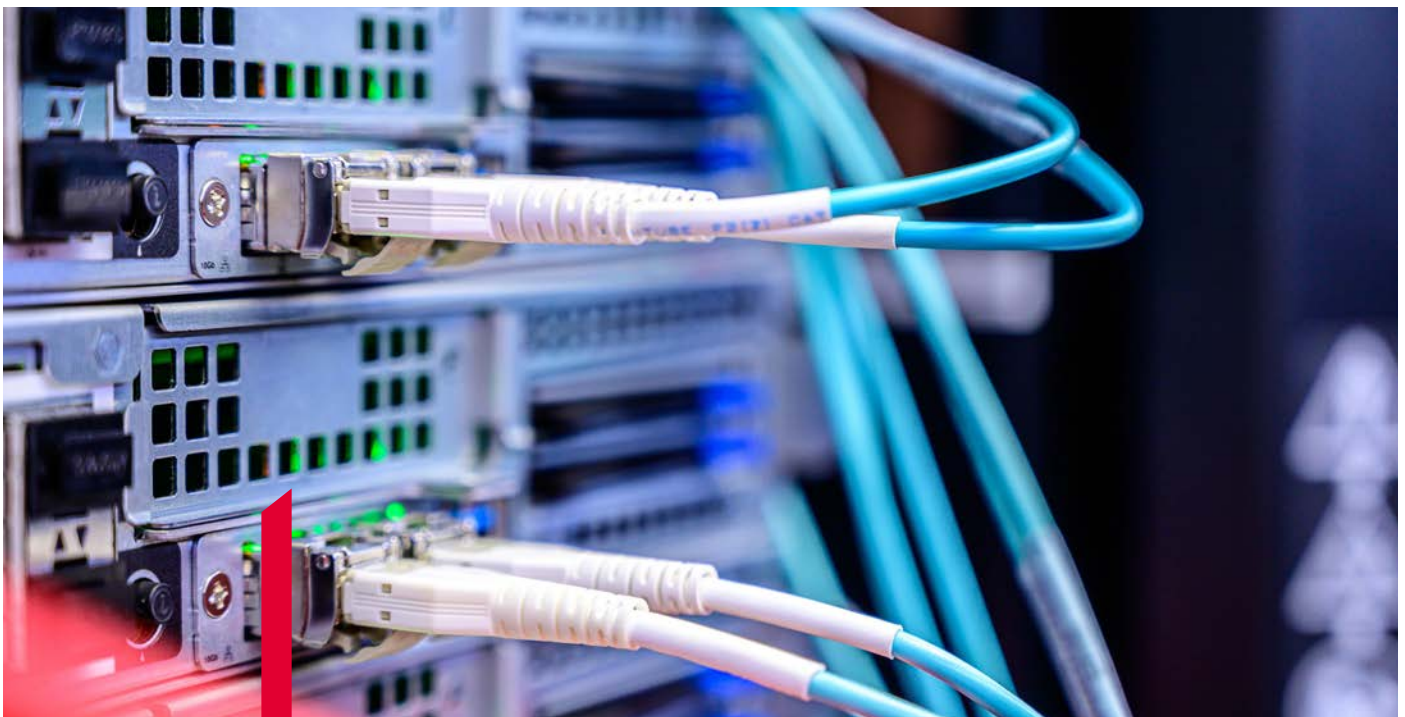
Person elected is not the same as person appointed to a legal person's organ

➔ Although the so-called Polish Deal has significantly expanded the scope of mandato-

ry health insurance, those “elected” to hold functions in the organs of legal persons will not be entitled to health insurance under current regulations, as they will not be subject to mandatory payment of health insurance premiums – indicates the response given to inquiry number 30834 to the minister of health on health insurance premiums on remuneration for the performance of social functions. As explained by the undersecretary of state Waldemar Kraska, this means that members of the organs of associations formed in accordance with the requirements of the Associations Act are not covered by mandatory health insurance premiums in connection with performing functions in the organs of associations. Based on the new regulations, this requirement applies only to persons who are members of organs constituting legal persons (“irrespective of the method of appointment”), by virtue of an “appointment letter”.

Paper invoice may be stored in electronic form only

➔ The taxable person will retain the right to deduct input tax from invoices received in paper form and stored only in electronic



form. The fact that the company has destroyed the invoices received in paper form has no effect on its eligibility for a deduction – says a tax interpretation issued on 7 February 2022 (number 0111-KDIB3-3.4012.637.2021.2.MAZ). Legal regulations allow invoices to be kept in electronic form in any manner that ensures they are kept by reporting period and easy to locate, and safeguards the authenticity of origins, integrity of content and legibility of such invoices from the moment they are received to the expiration of the statute of limitations on the relevant tax liability. The taxable person's eligibility to deduct VAT does not depend on either the type of invoice (paper/electronic) or the form in which the taxable person stores purchase invoices.

Loan to be included in transfer pricing documentation each year until repaid

➔ A loan transaction should be listed in transfer pricing documentation prepared for each, i.e. the first and subsequent tax year up until the loan is repaid, as long as there is a documentation requirement in a given tax year – i.e. the value of the loan exceeds PLN 10 million. For controlled transactions of a homogenous nature, consisting of several loans, the

documentation should include the principals of the loans concluded in the given tax year, as well as in the prior years. For long-term agreements, the related party must determine if the given loan's principal exceeds the documentation threshold of PLN 10 million in the first and the subsequent tax years – indicates the Ministry's of Finance response to inquiry number 29105. More on this on our website.

Employee cannot be disciplined for failure to present a Covid certificate

➔ The court overturned the disciplinary penalty of a warning imposed on the employees of a state institution who – contrary to the employer's directive – failed to present Covid certificates or undergo antigen tests prior to starting work. The appellants' representative argued that the law does not allow employers to process such information, whilst the regulations on occupational health and safety cannot interfere with data of such importance. The ruling was issued by the District Court for Warszawa-Śródmieście in Warsaw, whilst the 8th Division of Labor and Social Security annulled the disciplinary penalties imposed on the group of employees in a ruling issued on 26 January 2022 (case file VIII P 475/21).



CALENDAR (most important deadlines)

- ✓ Payment of ZUS premiums for February 2022 - other premium remitters
- ✓ Payment for February 2022 of monthly PIT and CIT advances
- ✓ Payment for February 2022 of advances collected on employment income
- ✓ Payment for February 2022 by remitters of advances collected for income tax or lump-sum income tax
- ✓ Payment by a holding company representing a tax group of the tax advance collected for February 2022
- ✓ Payment of lump-sum tax if in February 2022 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 February 2022 by real estate company (PIT-ISN and CIT-ISN)
- ✓ Payment for February 2022 to PFRON



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- ✓ Payment of VAT for February 2022
 - ✓ Filing of VAT-8, VAT-9M, VAT-12 for February 2022
 - ✓ Filing of SAF_V7M for February 2022
 - ✓ Filing of SAF_V7K for February 2022 (record section)
 - ✓ Submission of recapitulative statement on VAT EU intra-Community transactions for February 2022
 - ✓ Filing of VAT-13 for February 2022
 - ✓ Submission to PFRON of documents relating to additional financing of the wages of disabled employees for February 2022
 - ✓ Reporting of sugar tax for February 2022
 - ✓ Reporting of retail sales tax PSD-1 for February 2022



CALENDAR



MARCH 2022						
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				

- ✓ Submission to tax office of information for 2021 about the amount of income earned (loss incurred) by corporate income tax taxable persons (CIT-8) whose tax year is concurrent with the calendar year, and payment of the resulting amount due – NOTE: this deadline is to be extended until 30 June
 - ✓ Submission to tax office (electronically) and to CIT taxable person without registered office or management in the territory of the Republic of Poland of information on the amount of revenue (income) earned IFT-2R for 2021
 - ✓ Submission to ZUS of 2021 of data about work in special conditions or of special nature (ZUS ZSWA)
 - ✓ Submission to PFRON by disabled persons who conduct business operations of an application for a refund of pension and disability premiums paid for February 2022
 - ✓ Submission to tax office of ORD-U annual information on agreements concluded with non-residents for 2021 by taxable persons whose tax year is concurrent with the calendar year
 - ✓ Submission (electronically) to the Head of National Tax Administration of transfer pricing information TPR-C, for which the filing deadline passed in December 2021
 - ✓ Submission (electronically) to the tax office of declaration on the preparation of local transfer pricing documentation, for which the filing deadline passed in December 2021
 - ✓ Electronic submission of CbC-P for 2021 and preparation or attachment to the local transfer pricing file of the master file for 2022.
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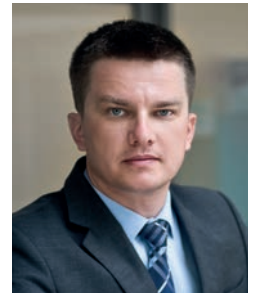
- ✓ Filing of VAT-14 on output VAT on intra-Community acquisitions of liquid engine fuels for March 2022
 - ✓ Payment of lump-sum income tax collected in March 2022 on dividend income and other income from shares in the profits of legal entities, and provision of information CIT-7 to taxable persons
 - ✓ Payment by acquirer of lump-sum income tax for March 2022
 - ✓ Filing of declaration on amount of income from unrealized profits (PIT-NZ and PIT-NZS) for March 2022
 - ✓ Filing of declaration on amount of income from unrealized profits CIT-NZ for March 2022 and payment of output tax indicated in the declaration
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- ✓ Filing of INTRASTAT for March 2022



- ✓ Payment of ZUS premiums for March 2022
– remitters with legal personality
- ✓ Payment to PPK



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Department

CALENDAR



O BDO

BDO is the world's largest audit firm focused on the medium enterprises market. dealing professionally with your financial matters, we leave you enough space to grow your business. Due to our international cooperation within the BDO network, we develop our knowledge and coordinate international projects. We put long-term relations first, and base them on mutual trust and respect.

Apart from Hr and payroll services, we also support companies in other challenging areas, as e.g.

- ▶ day-to-day bookkeeping,
- ▶ tax services (tax compliance),
- ▶ day-to-day advisory services and hotline consultations in HR and payroll, accounting and tax areas,
- ▶ labor law advisory services,
- ▶ tax, legal and financial advisory services,
- ▶ management advisory services and accounting,
- ▶ audit,
- ▶ reporting and IT solutions.

The team of Bdo responds to the needs of companies, adjusting complex solutions both to the economic reality and to the specific features of their activities, at the same time putting quality and professionalism first. If there are in your Company issues that require support or advice in the above areas, we are the right partner for you and you are encouraged to contact us.

We will be happy to meet your needs and offer support.