

TAX & LEGAL ALERT

April 2020



NEW SOLUTIONS FOR ENTREPRENEURS UNDER THE "ANTI-CRISIS SHIELD 2.0"

The law on special aid instruments in connection with the spread of the SARS-CoV-2 virus, or the so-called Anti-Crisis Shield 2.0 (although some might argue that the name Shield 1.1 would be more appropriate), was signed by the President on April 17, 2020.

It introduces further aid solutions for business, which found itself in a difficult situation due to the pandemic. Below we present the most important tax and legal solutions as well as employment aspects proposed under the Anti-Crisis Shield 2.0.

TAX-RELEVANT ISSUES

ZUS RELIEF ALSO FOR COMPANIES WITH 10 TO 49 EMPLOYEES

Anti-Crisis Shield 1.0 has already introduced the possibility of exemption from the obligation to pay social security contributions for the months March - May 2020. However, only entrepreneurs reporting a maximum of 9 insured persons to ZUS (Polish Social Insurance Institution) could use it. This exemption concerns, contributions for social insurance, health insurance, Labor Fund, Solidarity Fund, Guaranteed Employee Benefits Fund, Bridging Pensions Fund. The application for exemption should be submitted not later than June 30, 2020.

The Anti-Crisis Shield 2.0 provides for the possibility to take advantage of the exemption from paying social security contributions also by entrepreneurs who report 10 to 49 insured to ZUS.

However, in the case of these entrepreneurs, the exemption is granted in the amount of **50%** of the total amount of unpaid due contributions, indicated in the settlement declaration submitted for a given month, respectively: March, April, May 2020.

The exemption from the obligation to pay contributions both for entrepreneurs reporting up to 9 insured persons and for entrepreneurs reporting between 10 and 49 insured persons is granted upon request, if the entrepreneur was reported as a contribution payer and reported the insured persons in the following period:

- before February 1, 2020, and for February 29, 2020.
- from February 1 to February 29, 2020, and for March 31, 2020.
- from March 1 to 31 March 2020, and for 30 April, 2020.

The Act explicitly indicates that unpaid contributions for March - May are exempt from the obligation to pay social security contributions "ZUS contributions" (in the case of entrepreneurs reporting for insurance from 10 to 49 people, 50% of these contributions are subject to exemption).

However, according to an officially confirmed interpretation, based on article 24 of the Act on Social Security, **previously paid contributions for March may be recovered exceptionally**. This interpretation of the provisions of the Act on Anti-Crisis Shield 2.0 results from the fact that this Act entered into force after the date of payment of ZUS contributions for March.

Ipso facto, the entrepreneur who has submitted an application for exemption from contributions for three months (March, April, May), and has already paid the contribution for March, may apply to ZUS for payment of overpaid funds. An application for reimbursement of this overpayment must be submitted before the deadline for paying ZUS contributions for April. The overpayment will be refunded provided that the entrepreneur meets the conditions for being exempt from ZUS contributions and does not have arrears for earlier periods (because in such a situation, the overpayment for March will be credited towards these arrears).

If the entrepreneur does not apply for a refund of the overpayment for March, this overpayment will be settled against ZUS contributions for April and will no longer be recoverable. It should be remembered that the exemption from ZUS for the months of April and May applies only to contributions not yet paid.

POSSIBLE REDUCTIONS IN PROPERTY TAX

Municipalities and communes were given the opportunity to introduce an exemption from property tax for a part of 2020 and to extend the deadlines for payment of property tax installments also to non-governmental organizations and other entities referred to in the Act on Public Benefit and Volunteer Activities, whose financial liquidity has deteriorated due to incurring negative economic consequences due to COVID-19.

EXTENSION OF TRANSFER PRICING DEADLINES (BUT ONLY FOR SOME)

The deadline for submitting a statement on preparation of local transfer pricing documentation was extended until the end of September 2020, while the deadline for preparing group transfer pricing documentation was extended until the end of December this year. However, the extended deadlines apply only to taxpayers whose tax year started after 31 December 2018 and ended before 31 December 2019. (i.e. it lasted during 2019, but less than 12 months).

In the case of other taxpayers whose tax year corresponds with the calendar year, the deadlines remain unchanged (and will be exactly the same as the deadlines referred to above).

TAX CAPITAL GROUPS

The provisions of the Corporate Income Tax Act, regulating the status of a tax capital group (PGK), introduced facilitations for maintaining this status in case of negative effects resulting from COVID-19.

A PGK will not lose its status even if there are tax arrears in the companies forming it and PGK itself does not achieve the required share of income in the revenues of at least 2%.

These rules would apply to a tax year that commenced before 1 January 2020 and ends after 31 December 2019 or that commenced after 31 December 2019 and before 1 January 2021.

VIRTUAL CURRENCIES EXEMPT FROM PCC

The provisions of the Act on Tax on Civil Law Transactions (PCC) introduced an exemption from this tax for transactions of sale and exchange of virtual currencies. The exemption comes into force on July 1, 2020.

DELIVERIES DURING THE EPIDEMIC

Pursuant to a solution provided for in the Anti-Crisis Shield 2.0, a delivery cannot be considered to be delivered if it is not collected by the recipient during the time of an epidemic emergency (consequently, various deadlines provided for in the tax law do not commence).

However, this rule will not apply in the case of tax inspections, customs and fiscal inspections and tax proceedings if such inspections or proceedings are a result of suspicion of committing a crime or fiscal offense.

ARP FINANCIAL SUPPORT INSTRUMENTS

Entrepreneurs who, due to the announcement of the epidemic emergency or the state of the epidemic, have found themselves in a difficult financial situation, will be able to apply for special aid from the Industrial Development Agency S.A. (ARP). Financial support from the Industrial Development Agency in the form of loans, guarantees, sureties, leases and other financial instruments, is intended to provide the beneficiary with financial liquidity for the duration of the epidemic emergency/the state of the epidemic and for a period of 12 months following the cancellation of the state of the epidemic until the negative economic effects cease.

Aid shall be granted upon application, which shall be obligatorily accompanied by a declaration of a difficult financial situation, data reflecting the financial situation and a description of measures aimed at stabilizing the economic situation of the entrepreneur. In principle, the ARP has 14 days to consider the submitted application for aid.

The amount of support, its type and the purpose, for which it will be allocated, as well as the rules and deadlines for its reimbursement are specified in the agreement between the ARP and the beneficiary. The entrepreneur (beneficiary) will be obliged to establish and provide the ARP with the required collateral.

Support from the ARP may be granted to every entrepreneur running business activity in the territory of Poland, regardless of whether they have the status of a micro, small, medium or large entrepreneur.

However, in order to receive aid from the ARP, the entrepreneur must prove that they are in a difficult financial situation caused by the COVID-19 pandemic. A difficult financial situation is construed as a decrease in the entrepreneur's economic turnover, i.e. a decrease in the sale of goods or services, in terms of quantity or value, by:

- not less than 15%, calculated as the ratio of the total turnover during any 2 consecutive calendar months falling in the period after January 1, 2020 to the day preceding the date of submission of the application, compared to the total turnover during the corresponding 2 consecutive calendar months of the previous year; or
- not less than 25%, calculated as the ratio of the turnover in any given calendar month after January 1, 2020 to the day preceding the date of the application, compared to the turnover in the previous month.

SOLUTIONS FOR THE REAL ESTATE INDUSTRY

NO SUSPENSION OF TIME LIMITS IN THE CASE OF ADMINISTRATIVE PROCEEDINGS TO DETERMINE THE LAND DEVELOPMENT CONDITIONS

The hitherto provisions of the Anti-Crisis Shield 1.0 have suspended the time limits for legal proceedings under the provisions of the Code of Administrative Proceedings (KPA) of June 14, 1960 and the Act of August 30, 2002 – Law on Proceedings before Administrative Courts (PPSA).

However, pursuant to the regulations proposed in the Anti-Crisis Shield 2.0, the above rule will not apply to the administrative development plan process. As a consequence, the architectural-construction authorities should issue land development conditions decisions within the time limits generally provided for in the KPA, i.e. within one month, and in particularly complex cases within two months. In case of serving a decision establishing the land development conditions or a decision to refuse establishing them to a party, the time limit for lodging an appeal against such a decision or a complaint to the administrative court will apply in accordance with the rules resulting from the KPA or PPSA

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| | <p>respectively – therefore, it will not be suspended during the epidemic.</p> <p>It should be assumed that the lack of suspension of time limits in the case of administrative proceedings to determine the land development conditions does not exclude the possibility for the party to file a complaint against the authority's idleness or a protracted manner of conducting the proceedings.</p> |
| <p>NO SUSPENSION OF WORK ON LOCAL DEVELOPMENT PLANS IN PROGRESS</p> | <p>The procedure for adopting a local spatial development plan requires the competent planning authority to obtain opinions or approvals for the draft plan from the relevant administrative bodies. As a rule, these opinions or agreements should be submitted to the planning authority within 14 days.</p> <p>The proposals contained in the Shield 2.0 assume that the time limits for submission of opinions or agreements will not be suspended. The competent administrative bodies participating in the procedure of adopting the local plan will be obliged to perform their tasks on time despite the coronavirus pandemic.</p> |
| <p>OBLIGATION TO EXAMINE IN A TIMELY MANNER APPLICATIONS FOR DETERMINING THE LOCATION OF RESIDENTIAL PROPERTIES SUBMITTED UNDER THE SO-CALLED LEX DEVELOPER ACT</p> | <p>The proposed regulations of the Shield 2.0 will also not postpone the time limits for the community/municipal council (rada Gminy) to adopt a resolution on determining the location of a housing project or to refuse to issue it. Investors' applications submitted under the Act of July 5, 2018 on Facilitation of Preparation and Implementation of Housing Investments and Accompanying Investments should be processed on time during the coronavirus pandemic.</p> |
| <p>ABOLITION OF THE REQUIREMENT TO OBTAIN A BUILDING OCCUPANCY PERMIT</p> | <p>According to the act, if, following the submission of an application for an occupancy permit for a building (regardless of its category) before the date of entry of the Anti-Crisis Shield 2.0 into force, no decision regarding the occupancy permit has been issued, then such an application will be recognized as a notice of completion of construction.</p> <p>This means that as long as the construction supervision authority does not raise an objection within 14 days from the date of entry of the Anti-Crisis Shield 2.0 into force or the submission of the construction completion notice, where the construction of the built structure has been completed during the epidemic emergency or the state of the epidemic, the investor will be able to start using the built structure without the need to obtain the relevant administrative decision in this respect.</p> <p>However, the wording of the new regulations has led to divergent interpretations. The majority of construction supervision authorities competent to issue occupancy permits have assumed that since under the regulations of the Shield 1.0, the time limits for objection have been suspended and the regulations of the Shield 2.0 do not contain an explicit provision to "unfreeze" these time limits in proceedings concerning occupancy permits, the investor cannot commence using the building, claiming that the competent administrative authority has not objected within 14 days. I.e., until the construction supervision authority issues a statement that there are no grounds for objection (in practice, this may take several weeks or months), the investor should refrain from starting to use the built structure.</p> <p>On the other hand, some construction supervision authorities have assumed that the new regulations simplifying the procedure of commissioning buildings are a special regulation which excludes the application of the general provisions</p> |

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| | <p>of Shield 1.0 on the suspension of time limits for raising objections. As a result, if no objection is raised within 14 days from the entry into force of the Shield 2.0 regulations or submission of a notice of completion of construction works, the investor acquires the right to start using the built structure.</p> |
| <p>EASIER TO ACCESS CASE FILES</p> | <p>The proposed amendments allow administrative authorities to make the case file or parts of it available to the parties using electronic means of communication, in particular if it is impossible to provide direct service to applicants at the office of the authority due to the coronavirus pandemic.</p> |
| <p>EMPLOYMENT ASPECTS</p> | |
| <p>WAGE SUBSIDY</p> | <p>The lawmakers have clarified the issue of salary subsidies for a period of 3 months. The grants will be eligible starting from the month the application is submitted, and not, as before, from the date the application is submitted.</p> <p>The group of recipients of subsidies was extended to include, i.a., non-governmental organizations and state legal entities within the meaning of the Public Finance Act.</p> <p>It was also specified that it will be possible to obtain subsidies in connection with the reduction of working time, not only if it is reduced exactly by 20%, but also if the reduction is lower, i.e. 20% is the maximal reduction (therefore, it will be possible to obtain subsidies under Article 15g of the Special-Purpose Act also in case of a 1/6 or 1/8 reduction in working time).</p> |
| <p>CHANGING THE WORK TIME SYSTEM AND SCHEDULE - ENSURING THE CONTINUITY OF THE COMPANY'S OPERATIONS</p> | <p>Some groups of employers will be provided with additional important opportunities to change the work time system and schedule. This applies to activities necessary to ensure the continuity of the business.</p> <p>To this end, it will be possible to order overtime work to the extent necessary and to order on-call time regardless of daily and weekly rest standards. In addition, it will be possible, in exceptional cases, to order rest arrangements to take place at the place indicated by the employer.</p> <p>However, the above applies only to certain employers, including:</p> <ul style="list-style-type: none"> ■ those carrying out activities relating to the maintenance of critical facilities ■ operating liquid fuel stations ■ enterprises of particular importance for the defense and economic interests of the state ■ performing banking activities within the meaning of the Banking Law Act ■ carrying out activities in the agri-food industry in connection with food production. |
| <p>OHS</p> | <p>During the epidemic emergency or the state of the epidemic, it is permitted to carry out initial training in occupational health and safety in its entirety through electronic means of communication, with the exception of on-the-job training at workstations (due to particular exposure to dangerous agents),</p> <p>The time limits for periodic health and safety examinations, which fall during the epidemic or 30 days after its end, shall be extended, and such examinations may be carried out within 60 days of the end of the epidemic.</p> |

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