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Polish Deal - changes in tax and penal fiscal proceeding

Among the numerous legislative changes, starting from 1 January 2022 also changes regarding tax and penal fiscal proceeding have entered into force, which may be of significant importance for all taxpayers.

Below we provide you with a summary of the most important changes and we also highlight what we can expect in 2022 in terms of tax audits and proceedings.

Investment agreement (*porozumienie inwestycyjne*) - a new instrument enhancing tax security

- The Polish Deal provides for the possibility of concluding an agreement between an investor and a tax authority on the tax consequences of a planned investment within Poland - an investment agreement (IA).
- The IA is the equivalent of various acts issued by different authorities: an advance tax ruling, binding rate information, binding excise information, an advance pricing agreement and a protective ruling.
- The IA will exclude the possibility for the tax authority to determine the tax liability (amount of loss) to the extent that the income (loss) reported by the taxpayer has been determined in accordance with the IA.
- An investor with whom the authority may sign the IA is an entity (whether a resident of the Republic of Poland or not) planning to make a new investment within the Republic of Poland with a value of at least PLN 100 million (from 2025 - PLN 50 million).
- A new investment will include: 1) acquisition of tangible or intangible assets (leading to an increase in capacity, a new product); 2) acquisition of assets belonging to a plant that has been closed down or would be closed down.

New powers of the tax authorities - verification purchase (*nabycie sprawdzające*)

- A verification purchase is a tool aimed at counteracting irregularities in keeping records of sales with the use of cash registers, failure to issue or hand over a fiscal receipt.
- The purchase will be made by an employee of a tax office or an officer of the customs and fiscal office. A verification purchase ends with a fine and a report (in case of violations).
- It cannot be ruled out that, following a verification purchase, an inspection or tax proceedings may be initiated if the National Revenue Administration authorities have

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grounds for such actions.

- A verification purchase may be documented by means of filming, photographing and making sound recordings.

The power of authorities to temporarily seize movable property

- A new power of tax authorities has been introduced in relation to tax debtors against whom enforcement authorities have issued enforcement titles.
- A possibility for officers of the customs and fiscal service (as part of customs and fiscal inspection) to seize movable property if it is found that administrative enforcement proceedings are conducted against a taxpayer with regard to an overdue amount exceeding PLN 10 000.
- A seizure may be made for a maximum of 96 hours. During that time, it is necessary to verify the arrears and to have the seizure approved (by the enforcement authority).
- It will only be possible to lodge a complaint against the decision on the approval of the provisional seizure (there is no such possibility beforehand).

Informing taxpayers by a tax authority on possible participation in a tax carousel

- A new power of the Head of the National Revenue Administration (KAS) to inform taxpayers about the risk of presence of at least one supplier who may act as a missing taxpayer in the trade in goods or services supplied to a taxpayer or a counterparty of that taxpayer. The information will be provided to taxpayers in the form of a letter.
- The tool will be optional - the Head of KAS will not be obliged to inform taxpayers about possible participation in a tax carousel.
- The law does not provide for the possibility to request the Head of KAS to provide information on an individual request of a taxpayer. A decision to inform a taxpayer of the risk is an exclusive decision of the Head of KAS taken in the *ex officio* manner. The new regulations do not include criteria which must be met for the Head of KAS to provide such information to a taxpayer in a specific case.
- The Head of KAS - within this letter - will be able to indicate all the entities included in a given chain.

Possibility to conduct a self-inspection

- The provisions of the Polish Deal also introduce the possibility for taxpayers to request that a tax authority should carry out a tax inspection (the so-called self-inspection).
- A taxpayer who receives a warning from the Head of KAS may request a tax office to verify whether transactions with an entity that may be a missing taxpayer (or within a chain in which such a missing taxpayer may have occurred) were performed with due diligence.
- Self-inspection will concern the examination of reliability and correctness of specific transactions made between counterparties indicated in the warning information received by the taxpayer from the Head of KAS. The exercise of due diligence on the part of the taxpayer who received the warning will also be verified on an individual basis.

Changes concerning submission of voluntary disclosure (*czynny żal*). When will a correction of a declaration not protect against the fiscal penal code?

- The JPK_V7 (SAF-T) contains both a declaration part and a recording part. Until now, in the case of correcting the recording part of the SAF-T - in order to protect oneself from potential fiscal penal responsibility - it was necessary to submit a voluntary disclosure.
- Pursuant to the new wording of Article 16a of the Fiscal Penal Code - from 2022 also a legally effective correction of the ledger will exempt a taxpayer from fiscal penal liability.
- This means that there is no need to submit a voluntary disclosure also when making a correction of the recording part.
- Significant limitation of the possibility to protect oneself from potential liability for a fiscal crime or offence in the case of making a correction to a declaration or ledger.
- The submission of a correction to a declaration or ledger by a taxpayer will protect the taxpayer from fiscal penalties if, prior to the submission of the correction, preparatory proceedings (probe or investigation) for a fiscal crime or offence have been initiated.

Can voluntary submission still be submitted electronically?

- Since 5.10.2021, an amendment to the Fiscal Penal Code has been effective. Under the new provisions a voluntary disclosure may be submitted in writing or orally to the minutes (earlier, the provision expressly indicated that it may also be submitted in the form of an electronic document).
- In view of the above, doubts have arisen as to whether it is possible to submit a voluntary disclosure in an electronic form after the above-mentioned date. In particular, taking into account the fact that the amendment provides for adding to this provision the possibility to submit a voluntary disclosure electronically, but only as of 2027 (on the basis of transitional provisions).
- It seems that these doubts have been largely minimised by the position of the Ministry of Finance, according to which: *submission of a voluntary disclosure by electronic means (e.g. e-PUAP, e-Urząd Skarbowy) remains effective as of 5 October 2021. It was the legislator's intention for the term "in writing" to apply to both paper and electronic forms.*

Trends in inspections and proceedings for 2022.

- Uncertainty regarding taxpayers' ability to apply certain solutions and tax reliefs, the introduction of a number of new obligations, increased inspection powers of tax authorities and planned increased inspection activity of the tax authorities will mean that taxpayers should take in 2022 even more care about tax security than before.
- It may be important to implement internal procedures and solutions to ensure proper settlement and fulfilment of tax obligations (often with the use of appropriate digital tools) and to take measures to prepare for potential tax inspections and proceedings.
- In terms of VAT, the main areas subject to tax inspection may include:
 - Tax carousels;
 - Abuse of right clause;
 - Fixed establishment;
 - Chain transactions and the right to apply the 0% VAT rate for intra-community delivery of goods;
 - Excess input tax.



- In terms of CIT, the main areas subject to tax inspection may include:
 - Transfer Pricing:
 - the arm's length nature of transactions, benchmarking, TPR information and management representations;
 - intra-group reorganisations (transfers of functions and assets), payments for intangible services, intangible assets, loan transactions, guarantees and warranties and long-term tax losses
 - Withholding tax:
 - passive payments (dividends, royalties and interest) and denial of CIT exemption;
 - beneficial owner, lack of economic substance and abuse of tax right;
 - application of tax rates resulting from double taxation treaties.
- With regard to PIT, most interest may be raised by the application of the anti-abuse regulations (GAAR).
- Additionally, members of the management boards of companies against whom tax decisions have been issued and with regard to which tax arrears have not been enforced against the company's assets - can expect the initiation of proceedings concerning their financial liability for the company's tax arrears.

If you are interested in the above information and its impact on your business, please contact:

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