

Repeal of the state of epidemic emergency - tax implications

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On 1 July 2023, the state of epidemic emergency will be repealed in Poland. This follows from the Regulation of the Minister of Health of 14 June 2023 on the repeal of the state of epidemic emergency within the territory of the Republic of Poland (already published in the Journal of Laws).

Below, please find the presentation of the impact of the repeal of the state of epidemic emergency on selected obligations and rights of entrepreneurs introduced as a result of the COVID-19 pandemic:

1. The impact of the repeal of the state of epidemic emergency on MDR reporting obligations

- a. Pursuant to COVID regulations, the deadlines for MDR reporting other than cross-border arrangements as of 31 March 2020 did not commence and those commenced were suspended. The aforementioned deadlines are to be resumed and commence on the 30th day following the date of the repeal of the epidemic emergency state.
- b. In practice, the Ministry of Health Regulation will come into effect and result in the 30-day deadlines for MDR reporting of arrangements other than cross-border (so-called domestic ones) will start to run from 1 August. [The deadlines that have been suspended will be respectively shorter]. This obligation will be particularly onerous for entities that did not report domestic reportable arrangements during the pandemic period, as it involves analysing events from the last 3 years in terms of their recognition as tax schemes and reporting those covered by the obligation.

2. The impact on the validity of certificates of residence

- a. As a general rule, the CIT Act provides withholding tax remitter may take into account tax residency certificate valid for 12 months. COVID special law introduced specific regulations in this respect. according to which if the 12-month period expired during the state of epidemic emergency, the remitter could still take this certificate into account for a period of 2 months following the repeal of this state. Consequently, the repeal of the state of epidemic emergency on 1 July 2023 will result in the current certificates of residency, older than 12 months, becoming invalid on **1 September 2023**.

- b. During the state of epidemic emergency, the taxpayer's place of residence could be confirmed by a copy of the tax residency certificate if the resulting information does not raise reasonable doubts as to the accuracy of the facts. This privilege will be abolished after a period of 2 months from the date of repeal of the state of epidemic emergency. Yet the copies are now accepted on the grounds of CIT law.
- c. Starting from 1 September 2023 tax residency certificates from 2019 and 2020 supported by relevant validity statement of the tax payer will not be accepted.

3. The impact on the possibility to make a payment to an account other than the one included in the White List

- a. During the state of epidemic emergency, it was possible to extend the deadline to submit a notice of payment to an account other than the one included in the VAT White List to 14 days from the date of the transfer order.
- b. As of 1 July 2023, a 7-day deadline for making such a notice will be reinstated.

4. The impact on the tax authorities' ability to extend the deadline for issuing tax rulings

- a. COVID provisions extended by 3 months the deadline for issuing tax rulings. These provisions applied to requests for tax rulings submitted and pending by the date of entry into force of the COVID Act and to requests submitted after the date of entry into force of the COVID Act. Consequently, tax authorities had six months to issue tax rulings. Once the state of epidemic emergency has been repealed, the basic 3-month deadline for issuing tax rulings will be reinstated. This deadline will apply to requests for tax rulings submitted after the date of the repeal of the epidemic emergency (i.e. submitted from 1 July 2023). The deadline for applications submitted before that date will continue to be six months.

5. The impact on the suspension of the statute of limitations for the punishability of an act and the statute of limitations for the execution of a sentence in tax offence cases

- a. The COVID Act suspended the running of the statute of limitations on the punishability of an act and the statute of limitations on the execution of a sentence in tax offence cases during the state of epidemic emergency and for a period of 6 months following the repeal thereof. Consequently, starting from **1 January 2024**, these periods will resume running.

- 6. The impact on the hearing of cases by the administrative court in closed session and on so-called remote hearings**
 - a. During the effective period of the state of epidemic emergency and within one year of the repeal thereof, the Provincial Administrative Court and Supreme Administrative Court may hear cases in closed session unless a party or participant in the proceedings requested that the case be heard in open session or objected to the transfer of the case to a closed session. In addition, the regulations allowed for a so-called remote hearing to be held during this period. As of **1 July 2024**, the principle of open court will be resumed, and thus hearings will be in general held in the courtroom.

- 7. The impact on the derogation from the principle of active participation of the parties in administrative proceedings and on the provision of files and documents by electronic means of communication**
 - a. The repeal of the state of epidemic emergency will result in the re-implementation of the principle of active participation of parties in administrative proceedings (Article 10 § 1 Code of Administrative Proceedings).
 - b. In addition, the regulations provided for, during the state of epidemic emergency, making case files and individual documents available by means of electronic communication and the possibility to carry out remotely actions in the course of the proceedings which required personal appearance. The repeal of the state of epidemic emergency will mean that these regulations will cease to apply from 1 July 2023.

- 8. Other changes**
 - a. COVID regulations provided the possibility to submit a request to waive the determination of a prolongation fee on the amount of tax or tax arrears in decisions on debt relief. Submission of the above request is possible during the state of epidemic emergency and within 30 days following the cancellation thereof. Tax authorities will be able to determine the prolongation fee in their decisions on applications submitted from 1 August 2023.
 - b. Tax clearance certificates issued during the state of epidemic emergency and within 30 days following the repeal thereof did not take into account tax arrears whose payment after the due date was covered by waiver of interest. As of 1 August 2023, such information will again be included in tax clearance certificates.

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

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