

To Whom It May Concern

Please find below the information on selected and, in our opinion, most significant **amendments to the business tax laws which become effective in 2021**.

We believe that this information will be useful for you.

The Mac Auditor Team

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The current consolidated version of the Polish CIT Act with the highlighted amendments which become effective from 1 January 2021 can be found [here](#).

## 1. Corporate income tax lump sum (the 'Estonian CIT')

The corporate income tax lump sum (henceforth “CIT-LS”) or the ‘Estonian CIT’ is a new, voluntary alternative to the traditional CIT in Poland. According to the Polish Ministry of Finance, (...) *this new tax method ties the value of corporate income to balance sheet law categories and consists in the change of when the tax becomes chargeable. It is a departure from the pre-existing tax principles and for the taxpayer, it will open a system based on new taxation principles which significantly vary from the basic taxation principles.*

CIT-LS is introduced in the [Polish Act of 28 November 2020 to amend the CIT Act and certain other acts](#) (Dz.U. 2020.2122). Thus, the CIT Act is amended with Section 6b titled “Corporate Income Tax Lump Sum”; however, some regulations also concern other Sections of the CIT Act.

As of the date of this brochure, [a draft guidance is available from the Polish Ministry of Finance and titled \*Przewodnika do Ryczałtu od dochodów spółek kapitałowych\* \(Guide to the CIT Lump Sum\)](#) which discusses the new CIT regulation in detail. The guidance is a detailed reference to specific questions concerning CIT-LS. The document has 123 pages, a testament to the scale of complexity of CIT-LS. Given the sheer scope of the CIT-LS issue, this brochure presents only a selection of information on the subject. Should you elect to enjoy the latest form of taxation CIT-LS is, we suggest you to read the full text of [the draft Guide from the Polish Ministry of Finance](#).

## 1.1. The Estonian CIT: the criteria

### Prerequisites for CIT-LS eligibility: Basic criteria

The taxpayers eligible for CIT-LS are those defined in the CIT Act Article 3(1), meaning taxpayers with the registered office or management in the territory of the Republic of Poland and with their entire incomes liable to taxation irrespective of the income generation location.

Moreover, to become eligible for CIT-LS, the taxpayer pre-qualified as above **must meet all of the following conditions** which are established in the CIT Act Article 28j(1):

- 1) **The total business operation’s corporate revenue in the previous fiscal year did not exceed PLN 100,000,000, or the business operation’s mean corporate revenue calculated on the last day of the previous fiscal year in the CIT-LS period did not exceed PLN 100,000,000, where the corporate revenues are accounted for plus collectible VAT;**
- 2) **less than 50% of the corporate revenue contemplated in Section 1.1.1 originates from passive income sources which follow:**
  - a) Active debt;
  - b) Interest and benefits from loans of any type;
  - c) From the interest of leasing costs;
  - d) Bonds and guarantees;
  - e) Copyrights or industrial property rights, including their disposal (sale);
  - f) Disposal and exercise of financial instrument rights;
  - g) Transactions with the affiliates construed as such under the CIT Act Article 11a(1)(4), if commercial added value is not generated or is negligible in connection to the transactions;
- 3) The taxpayer:
  - a) **has employed at least 3 FTEs** who are not partners or shareholders of the taxpayer for at least 300 days in a fiscal year or for at least 82% of fiscal year days, if the fiscal year of concern does not comprise twelve calendar months in succession, whichever applies, or
  - b) has monthly expenditure at the total amount which is at least three times the average monthly salary of the corporate sector for the payment of remuneration for employees who are natural persons and are not FTEs and are not partners or shareholders of the taxpayer, if, in connection with the payment of the remuneration the taxpayer is required by law to collect advance PIT rates and social and welfare payments as established in the Polish Social Security System Act of 13 October 1998;

- 4) carries out its commercial business incorporated as a limited liability company or as a joint-stock company, whose partners or shareholders, respectively, are natural persons only which have no property rights related to their right to benefit as founders or beneficiaries of a foundation, a trust, or another entity, or related to their legal relationship of financial trust;
- 5) has no stakes (shares) in the capital of another company or participation units of investment fund or a mutual trust, or the generality of rights and obligations in and towards a non-corporate personality, or other property rights related to their right to benefit as founders or beneficiaries of a foundation, a trust, or another entity, or related to their legal relationship of financial trust;
- 6) does not provide IAS-compliant financial statements for the CIT-LS period pursuant to the Polish Accounting Act Article 45(1a and 1b);
- 7) submits a Notice to Exercise CIT-LS Eligibility on a predefined form and to the tax office head of jurisdiction by the end of the first month of the first tax year in which the taxpayer wishes to use CIT-LS.

**The Estonian CIT or CIT-LS is solely addressed to LLCs (limited liability companies) and JSCs (joint-stock companies) the partners or shareholders of which include natural persons only.**

The legislator provided for simplifications of the foregoing prerequisites (see the CIT Act Article 28j(2 and 3)).

#### **For taxpayers who establish new businesses:**

- 1) The prerequisites stated in Sections 1.1.1 and 1.1.2 above are deemed to be satisfied in the first CIT-LS year;
- 2) The prerequisite stated in Section 1.1.3 does not apply to the first year of commercial business and the two directly subsequent fiscal year, and where from the beginning of the second fiscal year from the establishment of its commercial business, the taxpayer shall increase its employment level by at least 1 FTE until the employment level is achieved as specified in the amended CIT Act.

#### **For small-enterprise taxpayers and for the first CIT-LS year, the prerequisite stated in Section 1.1.3:**

- a) is fulfilled if the small-enterprise taxpayer employs at least 1 FTE who is not a partner or shareholder of the taxpayer for at least the period specified in the amended CIT Act;
- b) is fulfilled if the small-enterprise taxpayer has monthly expenditure at the total amount which is at least the average monthly salary in the corporate sector for the payment of remuneration for at least one employee who is not a partner or shareholder of the taxpayer, and in connection with the payment of the remuneration the taxpayer is required by law to collect an advance PIT rate and social and welfare payments as established in the Polish Social Security System Act of 13 October 1998.

#### **Selected groups of taxpayers are not eligible for CIT-LS. These include:**

- 1) Financial companies;
- 2) Credit institutions;
- 3) Taxpayers who generate income in Special Commercial Areas (SSE) in Poland or from a commercial business defined in grant permits which are established in the Polish New Investment Aid Act;
- 4) Taxpayers who are officially bankrupt or in liquidation;
- 5) Taxpayers who have been established by merger, division, or under the special circumstances regulated by the amended CIT Act;
- 6) Taxpayers who were divided by divestment or contributed to another entity under the special circumstances regulated by the amended CIT Act.

#### **Prerequisites for CIT-LS eligibility: Commercial criteria – Increase of CAPEX or salary expenses**

In addition to the foregoing, the draft Guide to the CIT Lump Sum by the Polish Ministry of Finance notes that (...) *the regulations which implement CIT-LS are addressed to the entities which intend to pursue a strategy of growth by active investment, especially by systematically increasing their stock of tangible assets, or by increasing expenditure on employee salaries. As a consequence, a prerequisite for CIT-LS eligibility is to increase capital expenditure. This prerequisite is deemed fulfilled also by those taxpayers who increase their expenditure on salaries.*

A prerequisite for CIT-LS eligibility is compliance with the criteria of increased capital expenditure or increases expenditure on salaries.

The amended CIT Act provides for additional facilitations for the taxpayers who establish new businesses and small-enterprise taxpayers, if they elect CIT-LS in the year 2021. These entities will be relieved from the obligatory capital expenditure for the two first years of CIT-LS.

The CIT Act Article 28g states that the CIT-LS taxpayer shall make **direct capital expenditure** (by acquisition of brand-new tangible assets, production of fixed assets, or payment of the financial leasing principal value, as construed under the Polish Accounting Act) at these amounts:

- 1) 15% or at least PLN 20,000, whichever is higher, in the two subsequent CIT-LS years; or
- 2) 33% or at least PLN 50,000, whichever is higher, in four CIT-LS years pursuant to the CIT Act Article 28f (1)(2) and these amounts shall be the rates or values, respectively, above the initial value of tangible assets determined on the last day of the fiscal year prior to the two-year or four-year (as applicable) of the CIT-LS period, and where the tangible assets must be in **Groups 3 to 8 of KŚT** (the Polish Classification of Tangible Assets), **and with the exception of passenger vehicles, aircraft, water/sea vessels, and other assets used mainly for private, personal business of the partners/shareholders and/or their family members.**

The draft Guide to the CIT Lump Sum by the Polish Ministry of Finance indicates that (...) *in general, the increase in capital expenditure is measured in biannual intervals or two subsequent tax years. By way of exemption from the rule in the previous sentence, under specific circumstances the capital expenditure can be settled every four years. Consequentially, it is not mandatory to meet the requirement of increasing the capital expenditure on a tax year by tax year basis.*

**The foregoing requirement of capital expenditure does not have to be fulfilled if the CIT-LS taxpayer made expenditure for the salary of natural persons in a two-year CIT-LS period—and those natural persons cannot be partners or shareholders of the taxpayer—and with the expenditure 20% or at least PLN 30,000 (whichever is higher) higher than the same expenditure in the tax year before the two-year CIT-LS tax period. The expenditure on salaries do not include the expenditures which are a direct burden of the taxpayer under separate regulations of law.**

The amended CIT Act provides for additional facilitations for the taxpayers who establish new businesses and small-enterprise taxpayers, if they elect CIT-LS in the year 2021. These entities will be relieved from the obligatory capital expenditure for the two first years of CIT-LS.

## 1.2. The Estonian CIT: Taxable income and tax basis

The essence of CIT-LS is to tax corporate income when it is decided to pay out the income to the partners or shareholders. The definitions of CIT-LS-liable corporate income and of the tax basis are much more complicated and in practical terms, partial corporate income tax will apply even if the income is not distributed to partners or shareholders.

Pursuant to Article 28m(1) of the CIT Act, the corporate income liable to CIT-LS shall be:

- 1) Equal to the **net profit generated in the CIT-LS period and only in the part which, by a bylaw to make dividend or to offset the net financial result, is intended to:**
  - a) **be paid to the partners or shareholders** (and constitutes an income from dividend), or
  - b) **offset the losses generated before the CIT-LS period** (and constitutes an income from the loss offset net profit);
- 2) Equal to **the hidden profits** (and constitutes the income on hidden profits);
- 3) Equal to **the non-business expenditures** (and constitutes the income on non-business expenditure);

- 4) Equal to the market value of the assets of an estate which is taken over or which is a non-monetary contribution above the tax value of the same assets (and constitutes the income from the assets value change) by way of merger, division, or transformation or entities, or by way of non-monetary contribution being a business or its organised part;
- 5) Equal to the net total profits generated in every CIT-LS year in the part in which these profits are not dividends or not intended to offset a loss (and constitutes the net profit income), and this sentence applies to taxpayers who end their CIT-LS liability;
- 6) Equal to the value of revenue and costs which, pursuant to the Polish Accounting Act, shall be accounted for in the tax year and included in the net profit (loss) if not included therein (and constitutes **the income from undisclosed commercial operations**).

Pursuant to Article 28n(1) of the CIT Act, **the CIT-LS base** shall be:

- 1) **The total of the income from dividend and from the profit intended to offset losses, determined in the months in which the respective bylaw was passed to make dividend or to offset the net financial result;**
- 2) **The total of the income on hidden profits and on non-business expenditure, determined in the month of rendition of the benefit or the pay-out or the expense;**
- 3) The income from the assets value change generated in the month of respective merger, division, or transformation of entities or of the non-monetary contribution;
- 4) The net profit income generated in the final CIT-LS year.

**Only the profits generated in the CIT-LS period shall be liable to CIT-LS** (this also applies when the profits are intended to offset losses from before the CIT-LS period). Hence, **the CIT Act requires each taxpayer who wished to be liable to CIT-LS and all its legal successors to itemize the profit and loss items generated from before the CIT-LS liability in the equity featured in the financial statements made in compliance with the Polish Accounting Act. The profits and losses generated and incurred, respectively, in the CIT-LS years, shall be itemized analogically.** The profit and loss itemization shall be reported as stated above for a period starting in the first year of the itemization and ending in the year of payment of the profits or, as applicable, of offset of the losses.

#### **Hidden profits are a significant category to CIT-LS.**

Pursuant to the CIT Act Article 28m(3), 'hidden profits' are construed as **benefits which are monetary, non-monetary, fully or partially payable, and rendered in relation to the right to profits, and other than dividends, and the direct or indirect beneficiaries of which can be partners or shareholders, or direct or indirect affiliates of the taxpayer, its partners or shareholders, and specifically, hidden profits include:**

- 1) The amount of loan (credit) issued by the taxpayer to its partner or shareholder or an affiliate of the taxpayer's partner or shareholder, and the interest, commission, pay, and charges from the loan (credit) issued by these entities to the taxpayer;
- 2) The benefits rendered for:
  - a) A private or family foundation or its equivalent entity, a corporation managed by either foundation type or by its equivalent entity, or for the beneficiaries of either foundation type or by its equivalent entity;
  - b) A trust or another entity, or a legal relationship of financial trust;
- 3) The surplus of the market value of a transaction as determined—in compliance with the CIT Act Article 11c—to be above the predetermined price of the same transaction;
- 4) The surplus of the returned supplement contributed to the taxpayer's company under separate regulations of law above the supplement paid, and if the supplement has not been paid in PLN, its exchange to PLN shall be done according to the mean foreign currency exchange rate published by the National Bank of Poland on the date of, respectively, the supplement return and the actual supplement contribution;
- 5) The profit-derived premium from the disposal of stakes (shares) or from the reduction of stake (share) value;
- 6) The equivalent of the profit intended to increase the initial capital of the company;
- 7) Endowments, including gifts and subscriptions of all kind;

- 8) Entertainment and hospitality expenses.

The premiums paid to partners or shareholders and equal to more than five times the mean monthly salary paid in the previous month in the company concerned (and with the maximum limit being the five times the mean monthly salary in the corporate sector) will, aside from the standard PIT liability, trigger identification of a hidden profit and a CIT-LS liability.

**Hidden profits do not include:**

- 1) **Gratifications** by any title discussed in Article 12(1) or Article 13(7, 8 or 9) of the Polish Personal Income Tax Act of 26 July 1991 or benefits paid by social security to natural persons, and **this applies to that part in which the total of the gratifications and benefits paid in one month to the same natural person is not more than five times the mean monthly salary** paid by the taxpayer for the titles discussed in Article 12(1) and Article 13(7, 8 and 9) of the Polish Personal Income Tax Act of 26 July 1991 or not more than five times the mean monthly salary in the corporate sector, whichever is lower, whereas the mean and average monthly salary shall be determined for the month before the month of payment of the payment of the gratifications and benefits to the natural person;
- 2) The depreciation expenses and write-offs and property loss write-offs related to operation of passenger vehicles, aircraft, water/sea vessels and other assets and in the following amounts:
  - a) The full amount, which applies to the assets used strictly for the commercial business of the company;
  - b) 50% of the amount, which applies to the assets not used strictly for the commercial business of the company;
- 3) The amount of loan (credit) returned by the taxpayer to its partner or shareholder or an affiliate, with the exception of the applicable interest, commission, pay, and charges.

### 1.3. The Estonian CIT: Amount and payment deadlines

Pursuant to Article 28o of the CIT Act, **the CIT-LS level** shall be:

- 1) **15%** of the tax base for **small-enterprise taxpayers** and the taxpayers whose mean revenue value calculated pursuant to the CIT Act Article 28j(1)(1) is not higher than the maximum revenue established by law for small-enterprise taxpayers (this maximum limit is currently **EUR 2,000,000 and the value of sales revenue plus collectible VAT**);
- 2) **25%** of the tax base for taxpayers other than those identified in item (1) above.

The basic CIT-LS is **15% (for small-enterprise taxpayers) or 25% (for all other taxpayers)**. A sufficiently high increase in capital expenditure makes the taxpayer eligible for the preferential CIT-LS at **10% (for small-enterprise taxpayers) or 20% (for all other taxpayers)**.

The CIT-LS levels is **reduced by 5 percentage points** if the capital expenditure increase was 50% or 110% over the two-year or four-year CIT-LS period, respectively.

**The taxpayer whose revenues exceed the threshold** established in the CIT Act Article 28j(1)(1) (and which is currently PLN 100,000,000 with VAT) **shall determine the collectible surtax at 5% of the tax base and for the income generated in the subsequent CIT-LS year**, using the formula established in the CIT Act Article 28q(2),

**The collectible CIT-LS payment deadline will depend on the CIT-LS.**

The basic collectible CIT-LS payment is the 20th day of the seventh month of the fiscal year.

Example: The assembly of partners of an LLC which is a small-enterprise taxpayer passed a bylaw in June 2022 to make dividend from PLN 1,000,000 from the 2021 profit. The collectible CIT-LS is PLN 150,000 and payable by 20/07/2022.

If the bylaw for the same purpose was passed later, it is assumed it was passed on the last day of the sixth month of the fiscal year and the collectible CIT-LS would be mature by the 20th day of the seventh month of the fiscal year.

The taxpayer is liable to pay:

- 1) the CIT-LS for the income from dividend and the income from the profit intended to offset losses, and the surtax for the two incomes, if any, by the 20th day of the seventh month of the fiscal year;
- 2) the CIT-LS for the net profit income (which is equal to the profits not in dividends and not intended to offset any loss, and this is **applicable to the taxpayers who end their CIT-LS liability**) and the surtax for the income, if any, **by the end of the third month of the fiscal year after the last CIT-LS year, whereas the taxpayer concerned may pay the collectible CIT-LS in full or in part within no more than 3 (three) years**, starting from the end of the fiscal year in which the collectible CIT-LS becomes collectible, and only if the taxpayer notifies the tax office head of jurisdiction of the taxpayer's elected method of settlement in parts, specifying the deadlines and amounts payable for the CIT-LS parts, and the notice is given prior to the collectible CIT-LS payment deadline;
- 3) the CIT-LS for the income from undisclosed commercial operations and the surtax for the income, if any, by the end of the third month of the fiscal year after the year in which the revenue or losses should be accounted for;
- 4) the CIT-LS for the income from hidden profits and for the income on non-business expenditure, and the surtax for the income types, if any, by the 20th day of the month after the month of pay-out or expense;
- 5) the CIT-LS for the income from the assets value change and the surtax for the income by the 20th day of the month following the month of respective merger, division, or transformation of entities or of the non-monetary contribution.

#### 1.4. The Estonian CIT: CIT-LS period

Pursuant to Article 28f(1) of the CIT Act, CIT-LS applies to **an uninterrupted period of 4 fiscal years** specified in the Notice to Exercise CIT-LS Eligibility made by the taxpayer. The CIT-LS period is renewed every four fiscal years until the taxpayer serves a notice of CIT-LS resignation in the tax return filed for the last CIT-LS year applicable to the taxpayer.

The decision to elect the CIT-LS eligibility remains binding for 4 years; however, under certain circumstances, the taxpayer will forfeit the right to enjoy the CIT-LS eligibility.

The taxpayer who elects the CIT-LS eligibility for the years 2021-2024 may serve a notice to resign to resign from CIT-LS in the tax return filed for any of the CIT-LS years. Here, the CIT-LS eligibility is lost effectively at the end of the CIT-LS year in the same tax return. This is designed to incentivise taxpayers to elect CIT-LS.

Pursuant to Article 28l(1) of the CIT Act, the taxpayer liable to CIT-LS shall forfeit the CIT-LS eligibility by the end of:

- 1) of the last of the four CIT-LS years, if a notice of CIT-LS resignation is served;
- 2) of the last of the two-year or four year CIT-LS period (as applicable) in which the taxpayer did not make the required capital expenditure or the required expenditure on salaries;
- 3) of the fiscal year in which the taxpayer failed in any of the prerequisites identified in the CIT Act Article 28j(1)(1 to 3) (the criteria of revenue and employment);

- 4) the year before the fiscal year in which:
  - a) the taxpayer failed in any of the prerequisites identified in the CIT Act Article 28j(1)(4 to 6);
  - b) the taxpayer has not managed any tax ledgers or the data in the existing tax ledgers do not facilitate determination of the net result;
  - c) the taxpayer will take over a third party entity (with exceptions);
  - d) the taxpayer will be taken over by a third party by merger or division of commercial entities, including division by divestment, or by non-monetary contribution being a business or its organised part, unless the entity taking over is CIT-LS-liable.

If the taxpayer forfeits its CIT-LS eligibility, it may re-apply for it after 3 fiscal years and no sooner than 36 months after the calendar year of CIT-LS eligibility forfeiture.

### 1.5. The Estonian CIT: Dividend PIT

The partners or shareholders of a CIT-LS liable company enjoy preferential PIT on dividends. The dividend PIT is 19% of the gross dividend amount is reduced by:

- 41% of the product of the percentage stake of the partner or shareholder in the company’s profits on the date the partner or shareholder acquired its right to dividends, and this applies when the CIT-LS is at 15% (the standard CIT-LS level for small-enterprise taxpayers);
- 37% of the product of the percentage stake of the partner or share of the partner or shareholder in the company’s profits on the date the partner or shareholder acquired its right to dividends, and this applies to the revenue from the dividends paid from the company’s profits taxed at 25% CIT-LS (the standard CIT-LS level for non-small-enterprise taxpayers);
- 71% of the product of the percentage stake of the partner or shareholder in the company’s profits on the date the partner or shareholder acquired its right to dividends, and this applies when the CIT-LS is at 10% (the preferential CIT-LS level for small-enterprise taxpayers);
- 51% of the product of the percentage stake of the partner or shareholder in the company’s profits on the date the partner or shareholder acquired its right to dividends, and this applies to the revenue from the dividends from the company’s profits taxed at 20% CIT-LS and this applies when the CIT-LS is at 20% (the preferential CIT-LS level for non-small-enterprise taxpayers).

A prerequisite of eligibility for the dividend PIT reduction is that the division of the profits is made in the CIT-LS period and itemized in the equity of the dividend payer’s company.

The following **example** illustrates the operation of the CIT-LS applied with the preferential (reduced) dividend PIT in comparison to the standard taxation model based on 9% or 19% CIT and the 19% dividend PIT. The assumption for this example that there is no other reason for CIT-LS than assignment of the gross profit for the payment of dividends, particularly where the partners have not collected a salary of more than five times the mean salary (otherwise the CIT-LS for hidden profits would apply).

Case	A	B	C	D
Gross profit for dividend (GP)	100,000	100,000	100,000	100,000
<b>CIT-LS (ESTONIAN CIT)</b>				
CIT-LS level (CLS.L)	10%	15%	20%	25%
CIT lump sum (CIT.LS)	10,000	15,000	20,000	25,000
Net profit (CLS.L × GP)	90,000	85,000	80,000	75,000
Dividend PIT base	90,000	85,000	80,000	75,000
Dividend PIT level	19%	19%	19%	19%

Dividend PIT before discount	17,100	16,150	15,200	14,250
Preferential discount index (PDI)	71%	41%	51%	37%
Discount value (PDI × F)	7,100	6,150	10,200	9,250
Dividend PIT after discount (PIT.PREF)	10,000	10,000	5,000	5,000
<b>Total tax collectible (CIT.LS + PIT.PREF)</b>	<b>20,000</b>	<b>25,000</b>	<b>25,000</b>	<b>30,000</b>
<b>Gross profit effective tax rate</b>	<b>20.00%</b>	<b>25.00%</b>	<b>25.00%</b>	<b>30.00%</b>
<b>STANDARD TAXIATION (9% or 19% CIT)</b>				
CIT rate	9%	9%	19%	19%
General CIT (CIT.9/19)	9,000	9,000	19,000	19,000
Net profit	91,000	91,000	81,000	81,000
Dividend PIT base	91,000	91,000	81,000	81,000
Dividend PIT level	19%	19%	19%	19%
Dividend PIT after discount (PIT.19)	17,290	17,290	15,390	15,390
<b>Total tax collectible (CIT.9/19 + PIT.19)</b>	<b>26,290</b>	<b>26,290</b>	<b>34,390</b>	<b>34,390</b>
<b>Gross profit effective tax rate</b>	<b>26.29%</b>	<b>26.29%</b>	<b>34.39%</b>	<b>34.39%</b>

## 1.6. The Estonian CIT: Other questions

### Forfeiture of the right to discount losses on tax incurred prior to the CIT-LS years

If the **taxpayer** elects CIT-LS eligibility while it incurred a loss of revenue in the fiscal years prior to the first CIT-LS year, it **will forfeit the right to discount the loss**. According to the draft Guide to the CIT Lump Sum by the Polish Ministry of Finance, the forfeiture of this right applies only to the loss generated in the years prior to the first CIT-LS year. This means that the right to discount the loss is not absolute in nature. Once the CIT-LS eligibility ceases, the taxpayer will be entitled to settle future losses of revenue (generated after the CIT-LS period) according to general taxation principles.

Moreover, the taxpayer who elects the CIT-LS eligibility, generated a loss of revenue in the years before the first CIT-LS year and acquired the right to discount the loss but did not discount the loss in full (and remains with a non-discounted part of loss), will have the right to discount the non-discounted part of loss by reducing the income from the revenue generated in the two fiscal years which directly precede the first CIT-LS year.

### Forfeiture of the rights to tax relief and exemption exercisable prior to the start of CIT-LS liability

Pursuant to Article 18aa the CIT Act is amended with, the taxpayer who deducts pursuant of the CIT Act Article 18 and 18d to 18f (as applicable to endowments, the R&D relief, and the toxic debt relief) will, as applicable, forfeit its right or obligation to continue the deductions from the first CIT-LS year.

### Pre-adjustment of revenue and its costs; income from transformation

Pursuant to Article 7aa(1) of the CIT Act, **the taxpayer who elects the CIT-LS eligibility shall perform the following procedure in its tax return for the year before the first CIT-LS year:**

**1. Account the following as revenue:**

- If not already accounted for so, the revenue accounted for in the net result of the taxpayer per the Polish accounting regulations and for the fiscal years before the first CIT-LS year;
- If not already accounted for so per the Polish accounting regulations, the costs accounted as revenue tax costs in the fiscal years before the first CIT-LS year;

**2. Account the following as the revenue costs:**

- If not already accounted for so per the Polish accounting regulations, the revenue accounted as tax revenue in the fiscal years before the first CIT-LS year;
- If not already accounted for as revenue tax costs, the costs accounted for in the net result of the taxpayer per the Polish accounting regulations and for the fiscal years before the first CIT-LS year.

The foregoing principles do not apply to non-tax revenues and to any costs which are not revenue costs.

Moreover, if the taxpayer was established by **transformation of a company** and its first post-transformation fiscal year is the first CIT-LS year, it is mandatory to **determine the income from company transformation**; this income is defined as **the surplus of the market value of equity assets determined on the date of transformation above the tax value of the equity assets determined on the same date**.

If the revenue, the costs or the income contemplated above is accounted for and the collectible tax value for the year before the CIT-LS year grows by at least 50% from collectible tax value which would have been generated without accounting for the revenue, the costs or the income as above, the collectible tax surplus can be paid by the taxpayer in parts and within 3 years, starting from the end of the fiscal year before the first CIT-LS year. The method of settlement in parts shall be given by the taxpayer in the applicable tax return.

**Itemization of non-divided profits and non-offset losses**

The taxpayer is also required to **itemize the following in its equity** for the last day of the fiscal year preceding the first CIT-LS year:

- The amount of non-divided profits and the amount of the profits in dividends referenced to the equities and generated in the years prior to the first CIT-LS year, and**
- The amount of non-offset losses incurred in the years before the first CIT-LS year.**

**Continued tax settlement**

Pursuant to Article 28n(3) of the CIT Act, the taxpayer shall calculate its tax base with consideration of the events which occurred before the first CIT-LS year if the settlement of these events will be continued according to the principles of accounting adopted by the taxpayer (e.g. depreciation rates, deferred settlement of costs, etc.).

**2. CAPEX fund, or an alternative to the Estonian CIT**

The CAPEX fund is a new and voluntary instrument designed to promote CAPEX projects.

The CAPEX fund is introduced in the [Polish Act of 28 November 2020 to amend the CIT Act and certain other acts](#) (Dz.U. 2020.2122).

Paragraph 1hb Article 15 of the CIT Act was amended with states that those **taxpayers** and with the exception of 'exempt' taxpayers (under a catalogue analogical to that for CIT-LS) **who, within a fiscal year, satisfy specific prerequisites (which are analogical to those for CIT-LS) may account specific write-offs in the revenue costs**. These specific write-offs are intended for a fund separated in the taxpayer's reserve and dedicated to CAPEX projects (like purchase of brand-new tangible assets or production of tangible assets, in either case classified in Groups 3 to 8 of KŚT (the Polish Classification of Tangible Assets), and with the exception of passenger vehicles, aircraft, water/sea vessels, and other assets used mainly for private, personal business of the partners/shareholders and/or their family members), if all of the following prerequisites are satisfied:

- 1) The taxpayer's CAPEX fund is formed with the profits generated for the year before the fiscal year;
- 2) The equivalent of the cash funds of the value of the write-off to the CAPEX fund is paid no later than on the date of the same write-off to credit **a bank account dedicated strictly to the CAPEX fund**;
- 3) The cash funds identified in item (2) above do not originate from a loan (credit), a subsidy, a grant, co-funding, or any other form of financial aid;
- 4) **The CAPEX funds accumulated in the fiscal year will only be spent on CAPEX projects no later than within the fiscal year after the year of the write-off**, unless:
  - a) The taxpayer notifies the tax office head of jurisdiction of the planned CAPEX projects, identifying the year of CAPEX fund spending for the CAPEX projects, and
  - b) The CAPEX funds will be spent no sooner than in the third fiscal year after the year of the write-off, and where each of these three fiscal years shall not exceed 12 months of time.

If, within a fiscal year:

- 1) **The taxpayer spends the CAPEX funds for a purpose which is not a CAPEX project identified in the CIT Act Article 28g(1 and 2) or the CAPEX fund was financed or returned to the taxpayer in any form; or**
- 2) **The taxpayer failed in the prerequisites identified in the CIT Act Article 28j(1)(1 to 6);**
- 3) **The CAPEX funds are not spent in compliance with the CIT Act Article 15(1hb)(4);**

then, from the next year, **the taxpayer forfeits its right to make write-offs accounted for as revenue costs for three fiscal years or for no less than 36 months.**

The amount written off to the CAPEX fund is a *de minimis* aid granted with the applicability and according to the principles established in the directly mandatory EU acts of law concerning *de minimis* aid.

### 3. Elevated revenue maximum limit for the preferential 9% CIT rate

**The maximum limit of revenue** generated in a fiscal year by a small-enterprise taxpayer (who meet all other applicable CIT-LS criteria) and which entitles the taxpayer to exercise the preferential 9% CIT rate for revenues (incomes) other than those from capital profits **is increased from EUR 1,200,000 to EUR 2,000,000 by the CIT Act amendment.**

### 4. CIT for limited partnerships and certain general partnerships

From 1 January 2021, the CIT payers include the following:

- Limited partnerships with the registered office or management in the territory of the Republic of Poland; and
- General partnerships with the registered office or management in the territory of the Republic of Poland, if the partners do not include natural persons only, and if the general company fails to provide to the tax office head of jurisdiction—by the start of the turnover year i.e. 1 January 2021—the disclosure of the PIT payers which directly or by mediation of non-PIT payers possesses the stake in profits of the general partnership (or an update of the disclosure in 14 days of its change).

The general partnerships with natural-person partners only and all other general partnerships who made the foregoing disclosure in time are not CIT payers.

The income of the foregoing company types will be taxed:

- With 9% or 19% CIT, as applicable, collectible from the limited partnership;
- From the individual partners, with PIT (for natural persons) and CIT (for all other partner types, e.g. private limited companies), mature on the date of profit/dividend payment.

### Tax exemptions and discounts

The CIT Act amendment introduces **subjective tax exemption for limited partners**. The amount exempt from tax is equivalent to **50% of the revenues generated by the limited partner due to its stake in the profits of its limited partnerships and no more than PLN 60,000, whichever is less**.

The subjective tax exemption **does not apply** to the limited partner if:

- the limited partner directly or indirectly owns at least 5% of stake (shares) in a corporate personality or in a private limited company, in an organisation being a general partner of the limited partnership concerned; or
- the limited partner is a management member in:
  - in a corporate personality or in a private limited company in an organisation being a general partner of the limited partnership concerned; or
  - in a company which directly or indirectly owns at least 5% of stake (shares) in a corporate personality or in a private limited company, in an organisation being a general partner of the limited partnership concerned;
- the limited partner is an affiliate (as construed under the CIT Act) of a management member or partner to a company which directly or indirectly owns at least 5% of stake (shares) in a corporate personality or in a private limited company, in an organisation being a general partner of the limited partnership concerned.

**The limited partner** can deduct—from the income tax on its profit from the limited partnership's profits—the value of the tax paid by its company and proportionately charging the limited partner's profit from the stake in the company. The limited partner will be liable to 19% PIT on the dividends and have the right to deduct the dividend PIT by the CIT paid by its limited partnership. The tax deduction will be maintain proportional to the limited partner's stake in the limited partnership's profits.

#### Tax losses

A CIT-liable limited partner can **reduce its revenue by a loss not deducted before the date on which the limited partnership became a CIT payer**, and the amount of reduction can be the amount of that part of revenue from the limited partnership in the limited partner's overall revenues for the individual fiscal years, unless the loss cannot be discounted from the revenue source it was incurred due to, in accordance with the applicable regulations.

A **PIT-liable limited partner** who—before the date on which the limited partnership became a CIT payer—incurred a loss from a non-farming commercial business, can reduce its revenue by this loss (if not deducted before the date on which the limited partnership became a CIT payer), and the amount of reduction can be the amount of that part of revenue from the limited partnership in the limited partner's overall revenues from the non-farming commercial business in the individual fiscal years, unless the loss cannot be discounted from the revenue source it was incurred due to, in accordance with the applicable regulations.

#### Payment of 'prior' revenues from limited partnerships

The interim regulations specify that the payment of the revenue generated by the operations of limited partnerships before 1 January or 1 May 2021 (the date depends on when the partnership becomes a CIT payer) shall be processed under the pre-existing taxation principles. Thus, the payment of the profits generated prior to the effective change of the CIT Act is not liable to CIT or PIT.

#### Continued tax value of assets in limited partnerships

The limited partnership which becomes a CIT payer will continue with the pre-existing tax value appraisal of its assets, especially as applicable to the initial value of tangible assets and intangibles, the adopted depreciation method, rates, and period, and the amount of depreciation write-offs made in prior from the same tangible assets and intangibles.

#### CIT payer status effect deferral until 1 May 2021

Limited partnerships may elect to have their CIT payer status deferred and if they do so, the amended CIT Act will apply to from 1 May 2021.

#### CIT payer status and ledgers

On the date before the date of CIT payer status assignment to a limited or general partnership, the partnership shall close its pre-existing ledgers.

If a partnership elects to enjoy the deferral of its CIT payer status by 1 May 2021 and its last day of turnover year is between 31 December 2020 and 31 March 2021, the partnership can choose not to close the ledgers on that date and extend its turnover year by 30 April 2021.

#### CIT-LS (the Estonian CIT) and limited partnerships, limited joint-stock partnerships, and general partnerships

The partnership types identified in the header of this Section and liable to CIT will not have the right to elect the Estonian CIT or CIT-LS.

### 5. Real estate companies [CIT/PIT]

The amended CIT Act introduces the definition of a **real estate company**. A real estate company is an entity other than a natural person and for whom it is mandatory to provide balance sheets in compliance with the Polish accounting regulations; in each balance sheet, the following shall be featured, as applicable:

- a) **For the real estate companies which establish new business** on the first day of the fiscal year—or on the first day of its turnover year if the real estate company is not an income taxpayer:
  - At least 50% of the market value of the assets was directly or indirectly the market value of the real estates (or titles thereto) located in the territory of the Republic of Poland; and
  - The market value of the real estates was more than PLN 10,000,000;
- b) **For the real estate companies other than those which establish new business** on the last day before the new fiscal year—or on last day before the new turnover year if the real estate company is not an income taxpayer:
  - **At least 50% of the balance value of the assets was directly or indirectly the balance value of the real estates (or titles thereto)** located in the territory of the Republic of Poland; and
  - **The balance value of the real estates was more than PLN 10,000,000;** and
  - The tax revenues in the year before the fiscal year or the turnover year (as applicable)—or when the real estate company is not an income taxpayer, **the revenues included in the net result and generated from rental, sub-rental, holding, sub-holding, leasing, and other contracts of similar nature or the transfer of ownership or title to real estate, and the stake in other real estate companies were at least 60% of, respectively, the total tax revenues or the net result revenues.**

If an entity meets the definition of real estate company, **the new mechanism of reconciliation applies to the capital profits from the sale of its stake or shares.**

A **real estate company** the stake (shares), the generality of rights and obligations, the participation units or similar rights of which are disposed of (also by redemption (buyback) of shares) **is required to pay—as the withholding agent (and as such, on behalf of the seller)** and to credit the relevant bank account of the tax office of jurisdiction—**an advance for the applicable income tax at 19% by the 20th day of the month after the month in which the income is generated, if the following applies:**

- 1) **The seller is an entity without a registered office or management in the territory of the Republic of Poland or a natural person not with residence in the Republic of Poland;** and
- 2) **The object of the transaction is the stake (shares) equivalent to 5% or more votes in the company, or the generality of rights and obligations providing 5% or a higher stake in the profits of a non-corporate personality, or 5% or more of all participation units or similar rights to the real estate company.**

If a real estate company cannot specify the exact amount of such transaction of sale, the advance tax shall apply at 19% of the market value of the stake (shares), the generality of rights and obligations, the participation units or similar rights.

The taxpayer (and as such the seller) shall, prior to the advance tax deadline, issue the amount of the advance tax to the withholding agent. By the deadline of the tax advance payment to credit the relevant bank account of the tax office head of jurisdiction, the withholding agent must notify the taxpayer that the payment was made.

To conclude, **the seller will continue to pay the taxes on capital profits, but acting as the withholding agent, the real estate company shall be liable with its entire estate for proper calculation, collection, and remission of the tax to the tax authority.**

Real estate companies are also liable for additional **information disclosure**, which includes disclosure of their shareholders to the Chief of KAS (the Polish National Treasury Administration). The tax data of real estate companies will be published in BIP (the Polish Public Information Bulletin).

Each real estate company which is not a resident of Poland is required to appoint its **'Tax Representative'**.

The obligation to appoint the Tax Representative does not apply to those real estate companies who are liable to income tax for the entirety of their income, irrespective of the location of income generation, in any of the EU member states or EEA states.

For taxpayers with limited tax liabilities, the following sources of income belong to those which may result in tax obligations in the territory of the Republic of Poland:

- Transfer of ownership of the stake (shares) in a company, the generality of rights and obligations from a non-corporate personality or the participation units in an investment fund, a mutual trust, or another legal entity, and similar rights, or due to the receivables which are consequential to ownership of the stake (shares), the generality of rights and obligations, or the participation units or rights if at least 50% of the market value of the assets of the company is directly or indirectly the real estates (or titles thereto) located in the territory of the Republic of Poland;
- Transfer of ownership of the stake (shares), the generality of rights and obligations, the participation units, or the similar rights in a real estate company.

## 6. Tax strategy reporting by largest-enterprise taxpayers [CIT]

The tax holdings (irrespective of the level of revenue they generate) and the taxpayers whose value of revenue generated in the last fiscal year was above **50 MEUR** are required by Article 27c the CIT Act was amended with to produce and publicly announce their tax strategies for the same fiscal year, and the applicability of these reports are established in the same Article of the CIT Act.

The taxpayer will have to publish a tax strategy report for each fiscal year in Polish language, on its official website and if the taxpayer has no official website, it shall be the website of its affiliate, and in either case, **each tax strategy report must be published by the end of the twelfth month after the end of the reported fiscal year.**

The taxpayer shall also provide the website address of the tax strategy report publications to the tax office head of jurisdiction.

## 7. Restrictions on tax loss deduction for company acquisition [CIT]

According to the CIT Act amendment, the regulations on restriction of eligibility for tax loss deduction due to restructuring are to be expanded from 1 January 2021. When determining the income value as the tax base, the taxpayer is not allowed to account for any losses from acquisition of an entity, a company, or a company's organised part (also by way of non-monetary contribution), or received a monetary contribution in exchange for which the taxpayer acquired a company or a company's organised part, and as a consequence of which:

- a) The actual core commercial business of the taxpayer post-acquisition or post-takeover becomes partially or completely different than before; or
- b) At least 25% of the taxpayer's stake (shares) is owned by one or more entities which did not hold such rights on the final date of the fiscal year in which the taxpayer suffered the loss.

## 8. Depreciation [CIT/PIT]

### Prohibition on reduction of depreciation rates under specific conditions

Pursuant to the current tax regulations in Poland, taxpayers have the right to increase or reduce the depreciation rates for specific tangible assets.

The CIT Act amendment effective from 1 January 2021 introduces a prohibition on increasing and decreasing the depreciation rates of the tangible assets operated by taxpayers in the course of their business the income generated from which are exempt from income tax, and this applies to the period of the income tax exemption, meaning it applies to the businesses operating in Special Commercial Areas (SSE) and Polish Investment Zones (PSI).

This amendment applies to the tangible assets listed in the taxpayer's record after 31 December 2020.

### Depreciation of used tangible assets

From 1 January 2021, the applicability of individual rates to used tangible assets listed in the taxpayer's record after 31 December 2020 is changed. The definition is changed for the 'used tangible assets' used to enable rapid depreciation pursuant to the PIT Act Article 22j and the CIT Act Article 16j.

According to the amended regulations, **a tangible asset can be qualified as 'used' if the taxpayer proves that prior to its purchase, the tangible asset had been used by another entity** for at least the following time:

- 6 months, and this applies to the tangible assets classified in Groups 3-6 to 8 of KŚT (the Polish Classification of Tangible Assets) and transport vehicles, including passenger vehicles;
- 60 months, and this applies to selected buildings (premises) and structures listed in the CIT Act Article 16j(1)(3) and the PIT Act Article 22j(1)(3).

## 9. COVID-19 pandemic regulations [CIT/PIT]

The Polish Act of 28 November 2020 (Dz.U. 2020.2123) implements a number of changes concerning tax simplifications due to the COVID-19 pandemic. The changes **are effective from 1 December 2020**.

First, the wording "the year 2020" or "the year 2020 and 2021" was replaced with the wording "from 2020 to the end of the fiscal year in which the state of COVID-19 pandemic is disaffirmed".

**The deadlines are extended for deduction of endowments** intended to combat COVID-19 on preferential terms;

- From 1 October 2020 to 31 December 2020, the amount which corresponds to 200% of the endowment value is deductible;
- From 1 January 2021 to 31 March 2021, the amount which corresponds to 150% of the endowment value is deductible;
- From 1 April 2021 to the end of the month in which the state of COVID-19 pandemic is disaffirmed, the value of endowment is deductible.

**The deadline is extended for the waiver of obligatory tax base adjustment against the liabilities non-discharged in 90 days** if all of the specific prerequisites listed in the Act are fulfilled, including the prerequisites concerning the negative economic impact from COVID-19 and reduction of revenue. Analogically, the reduced expiry period of 30 days is extended for the revenue toxic debt relief, which means reduction of the tax base by the value of the liability accounted for as receivable revenue minus the monetary benefit as construed under Article 4(1a) of the Polish Act to Combat Overdue Payment, if the value has not been settled or sold.

The amended regulations extend **the exemption from the minimum commercial estate tax** (i.e. the tax on revenues from buildings) applicable to the period of:

- from 1 March 2020 to 31 December 2020;
- from 1 January 2021 to the end of the month in which the state of COVID-19 pandemic is disaffirmed, if in effect past 31 December 2020.

#### 10. Taxation of liquidated company equity [CIT]

The tax regulations amended for 1 January 2021 feature a new provision by which if a company is liquidated and the partners of the company are credited with equity other than cash, the company (or the company partners, if the company is tax transparent) shall identify its revenues at the amount of the liability formed by division of equity between the partners.

#### 11. Transfer pricing [CIT/PIT]

The tax regulations amended for 1 January 2021 expand the applicability of the transactions liable to be verified against the arm's length principle, especially when the beneficial owner has a registered office in a tax haven; the obligations concerning the recording of transfer pricing are also increased.

#### 12. Withholding tax (WHT) [CIT/PIT]

The Polish Ministry of Finance is currently producing CIT and PIT regulations by which the effective date of the WHT refund procedure will, under special circumstances, be deferred by 30 June 2021, in line with the regulations which have been published so far. The CIT and PIT regulations are scheduled to become effective on 1 January 2021.

#### 13. Lump sum of register income tax [PIT]

The Polish Act to amend the Act of 20 November 1998 on Lump Sum Tax for Certain Register Income Types generated by natural persons introduced a number of changes which seem to make the lump sum or register income tax much more attractive and available to more businesses. The changes include:

- Expanded definition of the 'liberal profession', which now includes psychologists, physiotherapists, lawyers and legal counsels, insurance agents and brokers, tax advisers, and several other professions;
- **Reduction of the income tax on specific business activities, including a reduction from 20% to 17% for liberal professions;**
- A significant **increase of the maximum revenue limit of eligibility for the lump sum or register income tax— from EUR 250,000 to EUR 2,000,000;**
- Increase of the quarterly advance tax maximum limit from EUR 25,000 to EUR 200,000.

#### 14. Slim VAT / quick fixes

The VAT Act amendment, called the '*slim VAT*', implements a number of VAT simplifications and changes.

##### Corrective invoices

The VAT Act Article 29a(13) is now devoid of the requirement for goods and service customers to seek confirmation of reception of a corrective reduction invoice. The tax base can be reduced in the settlement period in which the corrective invoice is issued by the taxpayer provided that its records prove that the terms of tax base reduction have been coordinated with the respective buyer and fulfilled.

The legislator also changes the regulations concerning corrective increase invoices by amending the VAT Act Article 29a with Paragraph 17, which states that if the tax base is increased, its correction shall be done in the settlement of the period in which the cause for tax base increase occurred. This should be construed as follows:

- If a correction is caused by reasons which emerged at the time the original invoice was issued, the correction shall be settled in the tax return for the period in which the original invoice is recorded;
- If a correction is caused by reasons which emerged after the invoiced sale (e.g. new transaction circumstances arose which result in an increase of the tax base), the correction shall be settled in the tax return for the month of issue of the respective corrective invoice;
- If an error is found in an original invoice past its issue, the tax base increase, if required, shall be settled in the tax return for the period in which the original invoice is recorded.

The legislator codifies that the invoiced buyer must reduce the VAT accrued in the settlement period in which the terms of tax base reduction were coordinated with the vendor if, prior to the end of the same settlement period, these terms are fulfilled (i.e. a respective corrective reduction invoice is issued) and if the terms are fulfilled later, the accrued VAT must be reduced in the settlement period in which the terms are fulfilled.

### **Exchange rates for tax base determination**

Article 31a(2a-2d) is amended with the optional application of exchange rates by taxpayers who need to determine the tax base expressed in foreign currencies for conversion to PLN. It will be possible to convert foreign currency amounts for transaction settlement pursuant to the revenue conversion principles established in the Polish income tax regulations mandatory to the taxpayers.

If the taxpayer opts for the optional application of exchange rates, it will have to continue this application for at least 12 more months. The reversion to the pre-existing principles established in Article 31(1 or 2) shall also continue for 12 more months afterwards.

### **Export advance tax payments**

Article 41(9a) was amended to extend the deadline for the export of goods qualified for 0% advance tax rate from two months to six months.

### **Settlement of accrued VAT**

The deadline for deduction of accrued running VAT is extended to a total of four settlement periods for the taxpayers on monthly settlement; the total of three settlement periods remains unchanged for the taxpayers on quarterly settlement.

### **VAT deductions for accommodation services**

Article 88(1)(4)(c) is amended to enable deduction of the VAT accrued on the invoices of purchase of accommodation services to be resold.

### **Low-value gifts**

The legislator amended the regulations to make the amounts equivalent to low-value gifts, stated in Article 7(4), more realistic. The maximum value limit for non-recorded low-value gifts is raised from PLN 10 to PLN 20 (without VAT). The definition of 'gift value' which are recorded and do not exceed PLN 100 is made more precise and the amounts up to the PLN 100 limit are not taxed with VAT.

### **Obligatory split payment and invoiced receivable amounts**

In the amendment, the legislator refined the value for which the split payment remains obligatory by resigning from reference to the amount established in Article 19(2) of the Polish Entrepreneurs Code of 06 March 2018 and referring now to PLN 15.000 or its equivalent in foreign currency (and for conversion from foreign currency amounts, the tax base amount conversion principles apply).

### **Binding Tax Rates Notice**

The VAT Act is amended with Article 42 ha, by which the Binding Tax Rates Notice (Polish: WIS) and the decisions by the Chief of KAS (the Polish National Treasury Administration) and by the Director of KIS (the Polish National Office of Treasury Information) to amend the Binding Tax Rates Notice will remain effective for five years from the date of issue.

### **Travellers' tax free regulations**

There will be a change in the tax free regulations for travellers. The draft VAT Act provides for its amendment with Article 127a by which vendors will operate the 'Tax Free' system to issue electronic 'Tax Free' records; each electronic Tax Free record, if complete with an electronic confirmation issued by the tax and customs office for the goods on the Tax Free record shall authorize the respective VAT return. These changes switch the exchange of tax free records to EDI and implement electronic, IT-based management of these records.

### **Quick fixes from 1 July 2020**

Mac Auditor would like to remind you of the quick fixes in the recording of intra-Community transactions, chained transactions, and call-off stocks which became effective on 1 July 2020. We invite you to read our Brochure from December 2019 in which the quick fixes are explained.

### **Changes in the settlement of simplified goods imports from 1 July 2020**

Mac Auditor would like to remind you of the changes concerning the simplified imports of goods which are effective since October 2020. The key highlights of the changes include:

- Jurisdiction of authority: the tax and customs office head of jurisdiction over the importer's registered office; for the importers without a registered office or residence in Poland, the jurisdiction is with the Dolnośląskie Province Tax And Customs Office Head;
- The authority of jurisdiction shall be provided with the obligatory records within 6 months in prior of the import:
  - Certificate of conformity with tax and contribution payment (alternatively, a declaration will suffice);
  - Certificate of Active VAT Payer Registration;
- From 1 October 2020, the obligation for submission of the evidence for accrued VAT settlement to the relevant authority is removed (the deadline for this obligation was 4 months);
- Joint responsibility of representatives;
- The right to apply the procedure for the tax parts not settled in tax returns is forfeited.

## **15. Changes in the jurisdictions of tax offices (draft)**

The legislator plans to modify the jurisdictions of the tax offices in Poland by establishing a special tax office of jurisdiction over certain taxpayer types, which will include taxpayers with revenues above 50 MEUR, tax groups and their companies, and listed companies.

The remaining 19 special tax offices will process taxpayers within the revenue bracket from 3 MEUR to 50 MEUR irrespective of the origin of their capital.

## **16. White List of Taxpayers: a reminder**

Mac Auditor would like to remind you that on 1 July 2020, the Polish tax regulations were amended to implement PIT and CIT sanctions for payments to credit bank accounts which are not features on the White List of Taxpayers.

We invite you to read our Brochure from the end of June 2020 in which the changes are explained.

The same regulations align the current PIT Act from the beginning of 2021 to the current PKWiU (the Polish Classification of Products and Services) and refine the White List regulations concerning the taxpayers on quarterly income tax settlement.

## 17. The 'Sugar Tax'

On 1 January 2021, new Polish regulations will become effective to impose a duty on certain foodstuffs. The duty is called the 'Sugar Tax'.

According to Article 12a(1) the Public Health Act of 11 September 2015 was amended with, the marketing of beverages which include sugars, sweeteners, caffeine, and taurine will be liable to a duty.

This 'Sugar Tax' duty comprises the following amounts:

- PLN 0.50 for sugars up to 5 g per 100 ml of beverage or for any amount of one or more of the sweetener listed in Regulation (EU) No. 1333/2008;
- PLN 0.05 per 1 g of beverage for each gram of any sugar above 5 g in 100 ml of beverage;
- (...)

The maximum 'Sugar Tax' on 1 litre of beverage is PLN 1.20.

The obligation of 'Sugar Tax' payment arises on the date of marketing the duty-liable beverage in Poland. The 'Sugar Tax' shall be paid by the seller of the beverage. The seller shall calculate and pay the accrued 'Sugar Tax' amount by the 25th of the month after the month of obligatory declaration of the beverage contents liable to the 'Sugar Tax'. If the seller fails to pay the collectible 'Sugar Tax' on time, the tax office head of jurisdiction will determine an extra duty to be paid and issue it in its official decision.

We invite you to read Section 3a of the Public Health Act of 11 September 2015. We would also like to inform you that the records, declarations, and other documents related to the 'Sugar Tax' are not included in the basic scope of our contract; if the obligation to pay any accrued 'Sugar Tax' arises in your business and you would like Mac Auditor to handle specifics of the matter, please contact us for an analysis.

## 18. Minimum wage from 1 January 2021, zero PIT up to the age of 26, and holidays in 2021

### Minimum wage

The employment contract minimum wage will be **PLN 2,800** gross.

The minimum hourly wage under civil-law contracts will be **PLN 18.30** gross.

### Zero PIT up to the age of 26: PIT exemption expanded

The exemption applies to individuals up to the age of 26 which generate income from an employment relationship, a cooperative employment relationship, a service relationship, a cottage industry relationship or contracts of mandate; from 1 January 2021, these sources of income are expanded to apprenticeship and traineeship. The exempt revenue limit is **PLN 85,528** per annum.

### Additional statutory holidays in 2021

January 1 (Friday) – New Year's Day

January 6 (Wednesday) – Epiphany

January 4 (Sunday) – Easter Sunday

January 5 (Monday) – Easter Monday

May 1 (Saturday) – Labour Day

May 3 (Monday) – Constitution Day

May 23 (Sunday) – Pentecost

June 3 (Thursday) – Corpus Christi

August 15 (Sunday) – The Assumption Feast of Saint Mary the Virgin / Armed Forces Day

November 1 (Monday) – All Saints' Day

November 11 (Thursday) – Independence Day

December 25 (Saturday) – 1st day of Christmas

December 26 (Sunday) – 2nd day of Christmas

For each holiday which is on Saturday (May 1 and 25 December), each employee shall be given an extra free day. The extra free day shall be scheduled within the settlement period (of one month or three months, as applicable) of the work place.

## 19. Changes in ZUS regulations

### Restriction of the retirement and pension contribution assessment base (the annual limit), or the '30x Factor'

In 2021, the amount of the annual assessment base for the retirement and pension contributions is restricted to **PLN 157,770** with the forecast mean monthly wage of its determination fixed at PLN 5,259.

### Register of Contracts of Specified Work

Each employer will be required to report to ZUS every employee contracted for specified work. The reports shall be made on Form **ZUS RUD**; each report shall feature the relevant data of the individual contracted for specified work (full name, PESEL no., date of birth, address of residence, and mailing address), the specifics of contracted work, and the duration of contract. The gratification (the price of the contract of specified work) needs not to be disclosed. The ZUS RUD shall be submitted for each individual in 7 days from contracting for specified work. This obligation applies to every contract of specified work concluded from the beginning of 2021.

### New ZUS Forms on the ZUS PUE platform

The new ZUS Forms will be implemented in two stages. The first stage began on 14 November 2020 and launched 31 new ZUS Forms. The second stage began on 31 December 2020 and will launch 46 new ZUS Forms. The new ZUS Forms will be HTML-formatted and simplified. Some ZUS Forms will have codes and titles revised. Several application forms available on ZUS PUE so far will be merged into a single form document. The new ZUS RUD Form will be implemented and dedicated to contracts of specified work.

## 20. Home office

### Home office on quarantine

Quarantine is seclusion of a healthy individual exposed to the risk of contagion and in whom no contagion is confirmed to have occurred. The quarantine period for the exposed employee is not equal to the work time lost due to an illness. If the employee does not apply for a sick leave wage or a sickness benefit and will do home office work in coordination with the employer, the employee will not be entitled to any sick leave wage or sickness benefit. The employee will receive regular working wage. Article 4h of the Polish Act of 16 October 2020 on Amending the Act on Special Arrangements for the Prevention, Counteraction and Fight against COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them and Certain Other Acts (Dz.U. 2020.1842) permit home office work with approval of the employer and the employee concerned, provided that the employer has the skills and housing and technical facilities to perform home office work.

### Home office in isolation

Isolation is seclusion of a individual confirmed or suspected to have contracted a communicable disease. Isolation at home applies to individuals who do not require inpatient care. Article 4ha of the Polish Act of 27 November 2020 on Amending the Act on Special Arrangements for the Prevention, Counteraction and Fight against COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them and Certain Other Acts (Dz.U. 2020.2157) permit home office work in isolation at home. Not unlike the home office on quarantine, the employee who performs work in isolation at home is entitled to regular working wage. Pursuant to Article 4hb of the same Act of 27 November 2020,

the employee is entitled to a sick leave wage or a sickness benefit for the duration of occupational inactivity on quarantine or in isolation at home.

## 21. PPK (Employee Equity Plans)

PPK (Employee Equity Plans) are implemented in milestones. The milestone dates for PPK implementation by employers depend on their employment levels. From 1 July 2019, PPK is obligatory for enterprises with a minimum employment level of 250 recorded on 31 December 2018. From 1 July 2020, PPK is obligatory for enterprises with a minimum employment level of 50 recorded on 30 June 2019 and 20 recorded on 31 December 2019, as applicable.

From 01 January 2021, PPK shall be implemented by all other employers and the public finance sector operations. The deadlines for PPK-related contract conclusion by all other employers follow:

- PPK Management Contract – by 23 April 2021;
- PPK Processing Contract – by 10 May 2021.

### The obligatory PPK are waived for the following:

- Self-employed workers, who are sole proprietorships—unless they hire individuals construed as ‘employees’ under the Polish PPK Act;
- Natural persons who hire other natural persons for purposes not applicable to the commercial business of the hiring natural person and not applicable to the commercial business of the hired natural person (example: individuals who hire baby sitters or ad-hoc help at home);
- Micro-entrepreneurs all employees of whom declared to resign from contributions (*A micro-entrepreneur shall be an entrepreneur who fulfilled all of the following prerequisites in one or both previous turnover years: had a mean annual employment level of less than 10 individuals, and generated an annual turnover on sales of goods, products, or services and/or financial operations at or below the PLN equivalent of EUR 2,000,000, or the total of the assets listed in the entrepreneur’s balance for the end of either of the two turnover years was at or below the PLN equivalent of EUR 2,000,000. Under Article 7(3) of the Polish Entrepreneurs Law, the mean annual employment level shall be determined in FTE and discounting each employee absent due to e.g. maternity, paternity, or parental leave, and each employee hired for occupational induction*);
- The employer to whom the Polish PPK Act is applicable and who manages a PPE (Employee Retirement Plan), and who accrues and pays the basic contribution to PPE at least at 3.5% of the wage, provided that the employer’s PPE has 25% or more of the employees.

\* \* \*

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