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OUR NEWS

1. Tax strategy

Further to the contemplated amendments to the CIT Act as of 1 January 2021, a new requirement will be introduced for businesses to publish a tax strategy in relation to their Polish taxation.

A company's tax strategy would cover expenditures determining the company's overall tax liability, as well as operations connected with keeping records and accounts. Taxpayers should also report expenditures required to address tax problems and mitigate tax risks.

Taxpayers may opt for one of the following two types of tax strategies:

- conservative approach – aimed at duly performing tax obligations and avoiding disputes with the tax authorities;

- aggressive approach – aimed at minimising its tax liability.

The tax strategy would cover:

1) a description of the taxpayer's approach to:

a. processes and procedures for managing its tax obligations; and

b. voluntary forms of cooperation with the National Revenue Administration;

2) a description of the taxpayer's approach to performing its tax obligations in Poland, along with information on the number of MDR reports on tax schemes, as set out in Article 86a § 1(10) of the Tax Ordinance, broken down by the taxes they relate to.

3) information on:

a. related-party transactions with a value exceeding 5% of the sum of the assets disclosed in the balance sheet; and

b. restructuring activities planned or undertaken by the taxpayer that may affect the amount of its liabilities, or those of its related entities.

The obligation to disclose a tax strategy will apply to:

1) CIT payers with revenues exceeding EUR 50 million; and

2) tax capital groups irrespective of revenues.

The proposal fails to specify whether the obligation to publish a tax strategy is effective for tax years ended on or after 31 December 2020. If the Act enters into force this year, the entities that are required to publish tax strategies will need to do so for the first time in respect of the full financial year 2020.

2. | Changing the payment date vs. the statute of limitations on a debt

When performing a contract or settling contractual claims, the parties often modify the original payment dates. This practice is admissible based on the principle of freedom of contract, and so does not raise any controversies. It also happens (most often in the case of disputable claims) that the parties amend the payment date after a claim has become due and payable. In this event, however, it is important to specify the date on which a given claim becomes due and payable, as this determines the start of the limitation period and, under Article 119 of the Civil Code, limitation periods cannot be modified by the parties.

How can this issue be addressed? Can payment dates be changed freely?

The answer to this question was given by the Supreme Court (case No III CZP 88/19 dated 11 September 2020), confirming that a payment date can always be changed under an agreement by the parties, but if it results in the claim becoming due and payable on a new date, then the statute of limitations clock will start ticking after that new date.

The parties can always agree to amend payment dates, but they must remember that such an amendment will automatically affect the limitation period.

3.| How to dismiss an employee?

In these difficult times for the economy, we are regularly asked the following question: how can we dismiss an employee? More precisely, we are asked how to do it so that, even though there is a good reason behind the termination of the employment contract, the employee will not appeal to the labour court and win a claim for unfair dismissal?

The Polish Labour Code includes a range of regulations that do not facilitate this uncomfortable task. This, however, does not mean that every dismissal is likely to end up resulting in litigation.

Our experience shows that in most instances, employees tend to appeal against their employer's decisions to the labour court because of employer negligence, or simply because it is a shortcut . It is worth considering a few rules that must be observed in order to terminate an employment contract in a fair and reasonable manner.

Below we present four out of eight rules that in our opinion are key for making an effective dismissal:

1. The reasons for the termination must be specific and true. They must be indicated in a termination notice for an employment contract for an unspecified term. Therefore, the employer cannot simply write, as often happens: "loss of confidence". To make a dismissal, the employer needs to prepare, like for any other process at the company. Obviously, the employer has the right to part ways with an employee who it feels is underperforming, but the reasons for dismissal must be objective. It does not matter how many awards and recognitions the employee won for their work, or that they have never received any warning notice at work. If they are failing to perform their duties properly, they may be dismissed. On the other hand, it is true that the employee's disciplinary record, warning notices, either in writing or by email, and a description of any incidents of non-compliance could serve as important evidence in legal proceedings against the employee.

2. The dismissal must be non-discriminatory. In a situation where the employer wants to dismiss the highest-earning employee, or the only employee who works part-time, or if it could be said that there are reasons of sex, age, race, religion or others – the dismissal process must be well-thought out. Discrimination will certainly be claimed in court.

3. The employer must state all the reasons behind the dismissal. In the situation where the dismissal process has been well-prepared, it is likely that various breaches of the employee's duties will emerge. We encourage employers to make a detailed and thorough list of reasons for dismissal in the termination notice. It is worth dedicating time and attention to preparing an appropriate termination notice for two objectives: firstly, it must always be assumed that the employer may be convinced that their dismissal is reasonable and justified. The more extended and precise the arguments are, the greater the chance of achieving this purpose. Secondly, it follows from court decisions that if even one of the grounds for termination is proved in court, assuming that it is sufficient for the termination of the employment contract, then the court will dismiss the employee's claim.

Employers tend to specify a loss of confidence as a general cause for dismissal. Disregarding the fact that this argument does not satisfy the first two rules for the effective termination of an employment contract, a loss of confidence should be considered not as a reason, but as a result of the employee underperforming their duties. Therefore, we recommend stating that the employee breached a, b and c, which resulted in a loss of confidence. But be aware that a loss of confidence is proportional to the position held and the responsibilities at the employer, and that the court will also assess this argument proportionally.

4. | Estonian CIT

From 2021, capital companies in Poland with a turnover of up to PLN 100 million that are owned exclusively by individuals will be subject to what is known as 'Estonian CIT' regulation. The shareholders will be able to settle their accounts in a very favourable manner, unless they decide not to take dividend payments.

This solution will be available to companies:

- with no interests in other entities;

- with at least three employees in addition to the shareholders;

- with passive revenues not exceeding their operating revenues; and

- reporting capital expenditures.

To be eligible, a company must satisfy all these criteria jointly.

There are two options concerning Estonian CIT. The first is a full (comprehensive) taxation model applicable to distributable income. The second option allows for allocations made to a special fund (an investment account for deductible costs).

Those impacted by the legislation can choose a taxation model for four years and then extend it for further four-year terms, provided that they remain eligible. Additionally, taxpayers who have chosen the Estonian measure are required to report any increase in their capital expenditures by 15% within two years.

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Please do not hesitate to ask us questions

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