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OUR NEWS

1. The impact of the COVID-19 pandemic on the conditions on support for new investments

Businesses who intend to invest in certain types of activities in Poland may be able to receive government support in the form of tax relief. The conditions attached to this support are set out in the laws on CIT or PIT.

A relief decision is issued pursuant to the Act on Support for New Investments of 10 May 2018 (consolidated text in the Journal of Laws of 2020, item 1752), which replaced the former Act on Special Economic Zones. Businesses have welcomed the opportunity to receive support, regardless of whether a given investment project is within a special economic zone or not.

A new investment means reallocating funds or resources into fixed assets or intangible assets. The assets must be used to establish a new facility, increase the production capacity of an existing facility, diversify production by including new products, or substantially change the production process or purchase assets owned by a facility that was closed or would have closed if the purchase had not been made. The assets must be acquired by a business not related to the seller. Therefore, the acquisition of shares is not an eligible investment.

A decision to grant tax relief depends on whether specific qualitative and quantitative criteria are met and is issued for a period of 10 to 15 years, depending on the intensity of public aid in a given area.

Qualitative criteria are determined separately for the services sector and for the industrial sector. The criteria include investments in services supporting certain sectors in line with the current national development policy (in which Poland may gain a competitive advantage), establishing a centre of modern business services with a coverage extending beyond Poland and the creation of well-paid jobs and offering support for the acquisition of knowledge and vocational qualification and cooperating with sectoral vocational schools, membership in the National Key Cluster, R&D activity or economic activity with a low environmental impact, and many more.

In order to satisfy the criteria, an applicant must receive a specific number of points, the minimum of which is determined based on the intensity of public aid in the area in which the investment is being made.

In turn, the quantitative criteria include the amount of qualified expenses to be incurred on the new investment. The minimum level of qualified expenses is determined based on the unemployment rate in a given powiat. The applicant is required to maintain the investment for the period of at least three to five years from completion. Additionally, an applicant is required to employ a specific number of employees for a period of three or five years.

The COVID-19 pandemic will undoubtedly affect the criteria set out above. It happens that the law allows to change a relief decision, but such change cannot result in increasing the maximum amount of the qualified expenses. An affected investor may apply for extension of the deadline for satisfaction of the criteria, as such extension does not mean exceeding the maximum amount of qualified expenses. It is important that the new deadline must set within the term for which the decision was issued (from 10 to 15 years).

An investor who is certain that it will not be able to satisfy the conditions may apply for revocation or expiry of the relief decision. In such case, such investor must return the aid money.

2. A simple joint-stock company - a new type of a company

On 1 July 2021, the amended Commercial Companies Code will enter into force (Journal of Laws of 2019 No 1655 of 30 August 2019) introducing a new type of company, namely the simple joint-stock company. This new corporate vehicle will merge the benefits of a limited liability company and a joint-stock company.

Common characteristics of different types of companies

The characteristics of a simple joint-stock company, which are also typical for a limited liability company and a joint-stock company, are:

- no personal liability of shareholders for the company's debts (as a rule, the company is liable for its debts, along with members of the management board on an exceptional basis);

- formal incorporation procedure (the articles of association in the form of a notarial deed or on an interactive form, the appointment of governing bodies, registration in the National Court Register (KRS));

- the stage of being "in organisation" (i.e. the period between executing the articles of association and being registered in the KRS);

- the corporate structure (the company's business is managed by the governing bodies);

- the opportunity to grant additional rights to shareholders (for example with respect to voting, dividend, the designation of members of the governing bodies) based on personal rights or rights attached to the shares; and

- the incorporation of corporate rights into rights attached to a share.

A simple joint-stock company– what are the differences?

Property structure and shares

A simple joint-stock company allows for the accumulation of capital and property without the need to create supplementary capital. In the case of a simple joint-stock company, it is a nominal equity, since the minimum amount is PLN 1. This means that, in practice, there is no need to collect contributions.

Another characteristic feature of a simple joint-stock company, differentiating it from a limited liability company and a joint-stock company, is that there no need to fix the amount of the share capital in the articles of association. Consequently, a change in value does not require an amendment to the articles of association. Nevertheless, the management board must register the amount of the share capital, and any changes thereto, to the commercial register. Importantly, the company may return the respective contributions to the shareholders once the company has been registered. Both a limited liability company and a joint-stock company must have a specific share capital, with any change to that having to be formally recorded in the presence of a notary and registered in the KRS).

The share capital is a basic fund of a simple joint-stock company, consisting in shareholders' contributions (including cash, real property, fixed assets and intellectual property rights). The share capital may also include mandatory deductions from the company's profits.

In a simple joint-stock company, shareholders' contributions are not strictly protected and may be returned if they are not needed for the company's operations or to pay off its debts. They may only be returned as long as it does not prejudice the rights of creditors. The company may return the contributed equity of up to 95% of its liabilities (provided that it will maintain the financial liquidity for the next six months).

Contributions to pay for shares

Contributions may be in kind or in cash. The novelty is that shares may be paid for with the value of work or services provided to the company.

The extended option to make contributions means that a shareholder may contribute to a simple joint-stock company any transferable rights with a value that can be determined.

Under the law, shareholders are not allowed to make non-equity contributions to pay for shares, but given the nature of the share capital in a simple joint-stock company, shareholders can, and indeed must, make non-equity contributions.

Please note that due to their nature, non-equity contributions are not included in the share capital and are not reported in the balance sheet.

All contributions (both in cash and in kind) must be made within three years from the registration in the KRS.

Valuation of contributions

Contributions made to a simple joint-stock company may be valued in a flexible manner to determine an interest resulting in the number of shares allocated. After the initial allocation of shares is made to particular shareholders, the value of the contributions and the share issue price is determined in the articles of association.

Shareholders may choose any method to determine the number of shares and they do not have to strictly follow the accounting principles. Nevertheless, in the balance sheet, equity interests must be recorded at fair value of the equity contributions.

Corporate governance

The founders may choose from among the following management models:

1) the management board as the only executive body;

2) the management board supervised by a supervisory board; or

3) a board of directors.

A new solution is the introduction of a monistic management structure based on a board of directors. The board of directors may have up to three directors, as members of the management board.

The specific nature of the monistic model can be clearly seen in the situation where the powers to manage the company's business are delegated to one or more directors on the board. They become executive directors, while the others perform non-executive functions. Non-executive directors are responsible for permanent supervision over the way in which the company's business is being managed. In this event, the board of directors merges the managerial and supervisory powers. The scope of delegating powers depends on the needs of individual shareholders, and different committees may be established composed of directors from both groups. Importantly, certain matters require directors to decide jointly. The delegation of responsibilities does not influence the rights of representation, as all the directors have equal rights in that area. The rights of representation may be assigned to directors in the articles of association, the rules of procedure or in a resolution of the board of directors.

Dematerialisation

All the shares in a simple joint-stock company are dematerialised – in electronic form, in an electronic register of shareholders maintained by a selected financial institution. The shareholders are entered in the register, and the register reflects any disposal of the shares or the establishment of an encumbrance thereon.

This solution is widely used in all joint-stock companies – since ordinary joint-stock companies are required to have dematerialised shares.

Summary

A simple joint-stock company is a new corporate vehicle equipped with an autonomic legal regulation. This introduction presents a basic overview without a detailed analysis of all the important areas. The decision to found a simple joint-stock company, and all matters in connection with drafting specific provisions of a founding document require a careful case-by-case analysis.

The assumptions underlying the introduction of the simple joint-stock company are attractive from the point of view of the current legal and business expectations. Undoubtedly, it will be the practice and facing the business reality will allow businesses to reliably assess the implemented solutions.

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