

Newsletter

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OUR NEWS:

TAX:

- **Family Foundation**
- **The National e-Invoice System (KSeF)** - The main challenges faced by taxpayers

LAW:

- **Information on employment contract after the amendment to the Labour Code**
- **New entitlements and changes** for parent/ carer employees





FAMILY FOUNDATION

A family foundation is an entity with legal personality with its registered office in Poland. It can only be established by one or more individuals, who establishes the foundation by drawing up a foundation deed or a will and testament providing for the establishment of the foundation before a notary public.

The main purpose of such a foundation is for private assets to benefit designated individuals (including the immediate family) and for this to continue for generations.

Family foundations can be established by enterprises. The Family Foundation Act does not prohibit a family foundation from acquiring a sole tradership, but as a family foundation cannot carrying out business activities, the foundation will not be able to continue to operate the business in the same way. This means that a sole trader will have to convert their business into a company if they still want to conduct business during their lifetime, or will have to sell the sole tradership in order to contribute the funds from the sale to the foundation.

Unlike a commercial company, there are no shareholders in a family foundation.

In principle, a family foundation, despite being a legal entity, is exempt from CIT. However, a family foundation will pay tax in the following situations:

1.A family foundation pays tax when it transfers benefits to the beneficiaries. On the other hand, it will not pay tax if it has no beneficiaries at all (such a situation is at least temporarily possible) or when the benefits are not paid. A tax of 15 per cent will be due upon the value of the benefit (whether cash or in kind) being transferred or made available by the family foundation directly or indirectly.

2.A tax of 15 per cent is also due on the value of the assets in connection with the dissolution of a family foundation.

3.A family foundation may carry out business activities, but only to a certain extent, in which case it will benefit from the entity exemption. The regulations provide for eight exceptional cases in which a family foundation may carry out business activities, these include:

- the disposal of assets, provided that the assets have not been acquired solely for the purpose of their further sale;
- Leasing, renting or making assets available for use on another basis;

- joining commercial companies, investment funds, cooperatives and entities of a similar nature;
- acquiring and selling securities, derivatives and rights of a similar nature; and
- granting loans to companies in which the foundation is a shareholder, or to beneficiaries.

On the other hand, if the family foundation carries out activities broader than those under the Family Foundation Act, it will pay income tax of 25%.

4.The family foundation pays what is known as the tax on revenue from buildings. This tax amounts to 0.035% of the tax base for each month and is paid on the value of real property exceeding PLN 10,000,000. The tax on revenue from buildings contradicts the assumptions underlying the Family Foundation Act and means that the contribution of real property to a family foundation should include tax costs.

The beneficiaries of the foundation are exempt from inheritance and gift tax, as with inheritance, as long as they belong to the founder's immediate family circle. This refers to the spouse, descendants, ascendants, stepchildren, siblings, stepfather and stepmother.

Beneficiaries who are not relatives of the founder will pay tax on the value of the benefits they receive. This will be a tax on income from other sources, at a rate of 15 per cent. As this will be a flat tax, the income will not be reduced by expenses. Beneficiaries unknotted related to the founder (e.g. a friend from outside the family) will not be able to take advantage of the exemptions concerning the inheritance and gift tax.



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The National e-Invoice System (KSeF) The main challenges faced by taxpayers

The National e-Invoice System (KSeF) is an initiative introduced in Poland that will revolutionise the process of issuing and receiving VAT invoices. The system was launched in January 2022 in an optional form, with its mandatory use expected to start from July 2024.

One of the main challenges companies currently face is building their own tools or finding off-the-shelf solutions that meet all e-Invoice compliance criteria and integrating them with the tax function.

Implementing a new e-invoice system requires conforming to certain standards, such as document structures, and registering documents on the government platform. This can be challenging for many businesses, especially large organisations with hundreds of thousands of documents to process in the new format.

The aim of this article is to explain the key challenges of implementing KSeF and to suggest solutions and assistance to help companies prepare for their new responsibilities. The authors highlight the key success factors that are crucial for the correct implementation of the new e-Invoice process.

Determining the specific requirements to implement e-Invoices

The National e-Invoice System was officially launched on 1 January 2022. Structured invoices are issued by taxpayers through the Ministry of Finance's ICT system, the National e-Invoice System (KSeF). This system is used to issue, receive and store invoices.

Initially, the use of the KSeF system was optional, largely due to major regulatory shortcomings and the fact it was full of technical inaccuracies. It was not until the most recent amendment to the bill that the solutions called for in the public consultation were introduced. As a result, the deadline for making the system compulsory for all VAT invoices in Polish business transactions has been extended six months to 1 July 2024.

Although the deadline seems distant, one should not forget the scale of the changes and the enormity of the preparations, not only technical, but also substantive – especially in terms of the tax issues that the taxpayer will have to introduce in order to remain in compliance with the new requirements.

Below, we outline the legal and tax aspects of the system, its practical challenges that the taxpayer will have to face in order to avoid tax risks due to the improper use of the KSeF system.

A taxpayer who, in breach of their obligation, fails to issue an invoice using the National e-Invoice System, issues an invoice inconsistent with the template provided, or fails to send an invoice to the National e-Invoice System on time, will be fined by the head of the tax office. This penalty can be up to 100 per cent of the amount of tax shown on an invoice issued outside of the National e-Invoice System or, in the case of an invoice without any tax shown, a fine of up to 18.7 per cent of the total amount on that invoice issued outside the National e-Invoice System.

The tax authorities have full access to the data in KSeF.

From 1 July 2024, the tax authorities will be able to see very detailed transaction data on an ongoing basis – at the time of invoicing. Care and diligence must be taken when submitting e-invoice data, as well as verifying the details correctly, in accordance with the provisions of the VAT Act.

Together with the information from single control files (JPK), with the appropriate analytical tools, it is possible to very precisely catch irregularities in VAT accounting.

The transition to a new invoicing system requires not only technological but also business and procedural changes. The layer of compliance of reported data with legal and tax regulations cannot be forgotten either (tax offices can use the data for potential inspections or checking activities).

How to choose the optimal technological solution?

The partnership between Ecovis and Pagero allows for a seamless integration of accounting and invoicing processes. This means that companies can manage their invoicing processes more efficiently and securely, reducing the risk of errors. By combining expertise and technology, Ecovis and Pagero have created an effective collaborative platform that can help companies of all sizes improve their operations by providing comprehensive, substantive and technical support for managing the company's invoicing process.

Implementing standardised processes for handling e-invoices in compliance with local regulations is a challenge, so it is worth entrusting it to a trusted partner with experience in this area. When choosing an e-Invoice platform provider, pay attention to its experience in implementing projects in the tax technology area. One such provider is Pagero, which has been on the market for more than 20 years and has been operating in Poland since 2022.

Pagero offers the world's largest open business network, with more than 14 million businesses already on board. It operates on more than 140 markets, ensuring that its customers comply with local regulations and exchange e-documents (e.g. invoices and orders) in agreed standards, structured formats and an agreed data scope. This network operates under the name Pagero Online.

It streamlines day-to-day work while providing transparency and insight into e-Invoice processes in compliance with legislation. From day one of using Pagero Online, users can exchange invoices with other network participants. What is particularly important is that Pagero offers the possibility to communicate with companies using solutions other than Pagero, thanks to numerous inter-operator agreements.

It is important that the system provides additional functionality, such as data security, support for emergency and offline modes, and automation of decree processes. The large volume of data and the technological constraints associated with the processing of data by the National e-Invoice System (KSeF) require an effective solution to efficiently initiate the invoice dispatch process and evenly distribute traffic according to load and KSeF response times.

In short, when choosing the right tool to integrate with KSeF, it is worth being guided by the operator's experience and scale, interoperability, speed of implementation, as well as the operator's provision of support in areas not supported by KSeF. These include the handling of incoming invoices from foreign contractors and the ability to send invoices with attachments.



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Attend the webinar:

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How to prepare your company for the implementation of e-Invoices?
How to choose the optimal technological solution?

INFORMATION ON EMPLOYMENT CONDITIONS after the amendment to the Labour Code

Effective as of 26 April 2023, the amendment to the Labour Code (implementing two directives of the European Parliament and of the Council of 20 June 2019: No 2019/1152 – on transparent and predictable working conditions in the European Union and No 2019/1158 – on the work-life balance for parents and carers) has significantly expanded the scope of information that an employer should provide to employees in connection with concluding an employment contract.

According to the amended Article 29 § 3 of the Labour Code, within seven days of an employee commencing work, in addition to information on the daily and weekly working time limits, the frequency of payment of remuneration, and the length of the notice period (and possibly on a collective agreement if applicable), the employer must also provide the employee with expanded information covering:

- a)** the breaks they are entitled to;
- b)** the daily and weekly rest periods they are entitled to;
- c)** the rules on overtime and compensation for overtime;
- d)** in the case of shift work, the rules on changing from shift to shift;
- e)** in the case of several workplaces, rules on movement between workplaces;
- f)** the components of the employee's remuneration and benefits in cash or in kind, other than those agreed in the employment contract;
- g)** the amount of paid leave, in particular annual leave;
- h)** the applicable rules on the termination of the employment relationship, including the formal requirements, the length of notice periods and the time limit for appealing to an employment tribunal or, if it is not possible to determine the length of the notice periods on the date of providing the employee with this information, how such notice periods are determined;
- i)** the right to training, if provided by the employer, and in particular the general principles of the employer's training policy; and
- j)** social security institutions (public and private, e.g. providing Employee Capital Plans).

In addition, employers without work regulations in force should include documentary information in the terms and conditions of employment about the date, place and time of paying remuneration for work, night-time hours and the method of confirming the employee's arrival and presence at work as well as excusing an absence from work.

The employer should notify all employees hired after 26 April 2023 about the extended terms and conditions. For employment contracts already in force on that date, the employer is obliged to supplement the information within three months from the date of the employee's request in written or electronic form.

The information can be provided in electronic form, as long as the employee can print it out and store it, and the employer has documentary evidence that it was received by the employee.[]

The amendment to Article 29 § 3 of the Labour Code means existing templates of information on employment conditions will have to be supplemented with additional elements. Given the scope of the required information, the document provided to employees will be longer and more detailed than the information provided so far.

Article 29 § 3 of the Labour Code:

The employer must inform the employee, in paper or electronic form:

1) no later than within seven days of the employee's admission to work, at least about:

- a) the daily and weekly working time limits applicable to the employee,*
- b) the daily and weekly working hours applicable to the employee,*
- c) the breaks to which the employee is entitled,*
- d) the daily and weekly rest to which the employee is entitled,*
- e) the rules on overtime and compensation for overtime,*
- f) in the case of shift work, the rules on the transition from shift to shift,*
- g) in the case of several workplaces, rules on movement between workplaces,*
- h) the components of the employee's remuneration and benefits in cash or in kind other than those agreed in the contract of employment,*

a) the amount of paid leave to which the employee is entitled, in particular annual leave, or, if it is not possible to determine the amount at the time when the information is communicated to the employee, the rules for determining and granting it,

b) the applicable rules on termination of the employment relationship, including the formal requirements, the length of the notice periods and the time-limit for appeals to an employment tribunal or, where the length of the notice periods cannot be ascertained at the date on which the information is communicated to the employee, the method of determining such periods of notice,

c) the employee's right to training, if provided by the employer, and in particular the general principles of the employer's training policy,

d) the collective bargaining agreement or other collective agreement to which the worker is subject and, where a collective agreement is concluded outside the undertaking by joint bodies or institutions, the name of such bodies or institutions,

e) where the employer has not established work regulations, the date, place, time and frequency of payment of remuneration for work, night-time hours and the method of confirming the arrival and presence at work and justifying absence from work adopted by the employer;

2) no later than 30 days from the date of the employee's admission to work, the name of the social security institutions to which social security contributions relating to the employment relationship are paid and information on the social security protection provided by the employer; this does not apply if the employee chooses the social security institution.

The provision of full and correct information must be ensured not only for compliance reasons, but also in relation to the employer's liability for misconduct. Indeed, the amendment to the Labour Code makes the offences of failing to provide information on the terms and conditions of employment on time, in gross breach of Article 29 § 3 of the Labour Code, and failing to respond to an employee's request to supplement information on the terms and conditions of employment punishable by a fine of up to PLN 30,000 (Articles 281 § 1(2a) and 2b of the Labour Code).

Article 281 § 1 of the Labour Code:

Anyone who, being the employer or acting on behalf of the employer:
(...)

2a) fails to inform an employee in a timely manner of the terms and conditions of their employment, in gross violation of the provisions of Articles 29 § 3, 32 and 33 and Article 291 § 2 and § 4,

2b) fails to respond to an employee's request in a timely manner, in paper or electronic form, or fails to inform the employee of the reason for refusing a request as referred to in Article 293 § 3,

(...)

- will be subject to a fine from PLN 1,000 to PLN 30,000.



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NEW ENTITLEMENTS AND CHANGES for parent/ carer employees

This year's amendments concerning employment law have introduced a number of new entitlements and changes for employees who are also parents or carers, these include:

- remote work;
- additional leave;
- overtime work;
- secondments; and
- flexible working.

Additional days leave for parent/carers employees

a) two days or 16 hours

An employee who has one or more children under the age of 14 will be entitled to an additional two days leave, or 16 hours, per calendar year. The employee decides in the first application to the employer (electronic/paper) whether it will be measured in days or hours. Only one employed parent/carers can use this entitlement.

b) five days of care leave

An employee will be able to take five days of care leave per calendar year in order to provide personal care or support to a family member or person living with them due to serious medical reasons. A family member in this case is considered to be: son, daughter, mother, father and spouse. Therefore, care for siblings, grandparents and other family members is only possible if they live with the employee. The employee must apply for such leave at least one day in advance and must indicate:

- the name of the person who requires care,
- the reason for the personal care; and
- the relationship of the family member, or the home address of another person, which should be the same as that of the employee.

The period of this leave counts as part of the period of employment.

Flexible working

An employee raising a child under the age of eight may apply for flexible working arrangements.

Flexible working is understood as: remote working, as well as: intermittent working hours, a shortened working week, weekend work, flexitime, individual work schedules and reduced working hours.

Such an application can be submitted on paper or electronically at least 21 days before the planned start of 'flexible working'.

The application should indicate:

- the child's name and date of birth;
- the reason for using flexible working arrangements;
- the start and end date of the use of flexible working arrangements; and
- the type of flexible working arrangement the employee plans to use.

The employer must inform the employee (by paper/electronic means), within seven days of receiving the request, either of its acceptance or the reason for refusal, or of another possible start date for "flexible working".

An employee may request (by paper/electronic means) to return to their previous type of work at any time when the circumstances requiring 'flexible working' change. An employee who has requested 'flexible working' is protected, as making such a request cannot be grounds to terminate the employee's contract of employment – with or without notice.

Consent of a parent/carers employee

An employee who is raising a child under the age of eight must consent to:

- overtime work;
- night work;
- intermittent working hours; and
- delegation outside the permanent workplace (e.g. to another city).

Remote working for a parent/carers employee

An employee who is a parent or carers raising:

- child under the age of four;
- child with a certificate of moderate or severe disability;
- child with a certificate of severe and irreversible disability, or an incurable life-threatening illness that arose during the child's prenatal period of development or at birth; and
- child requiring early support of child development, special-needs education or remedial classes

Additional protection for parent/carers employees

The new legislation protects any employee who is a parent or carers, as the employer cannot:

- prepare for the termination the employment contract, with or without notice;
- terminate the employment contract, with or without notice (unless it is justified to terminate the employment contract due to the fault of the employee, and with consent from the company trade union representing the employee);

An exception to the above protection is a declaration of bankruptcy or liquidation of the employer. The employer must prove the existence of these reasons.

The protection period extends from the date of applying for the leave in question until the end of the leave. The earliest the protection begins is:

- 14 days before commencing the maternity leave part or the conditional maternity leave part ;
- 21 days before the start of parental leave, or part thereof; or
- 7 days before the start of paternity leave or part thereof.



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