

# Newsletter

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# SIGNIFICANT CHANGES TO LAWS ON PERSONAL INCOME TAX

In August, the assumptions of a bill that is expected to introduce significant changes to laws on personal income tax, corporate income tax and other laws related to the tax system were published on the website of the Prime Minister's Office. The changes are aimed at tidying up the legislation, eliminating interpretation doubts and tightening the tax system.

*"The proposed solutions respond to the existing needs to put the tax legislation in order, eliminate doubts and discrepancies in interpretation and to seal the tax system. They implement the programmatic findings of the current government on building a simple, friendly and understandable tax system."*

## Restructuring as a key area of change

One of the main issues addressed in the bill is restructuring, which has been highly controversial in recent years. In 2023, new forms of restructuring, such as horizontal mergers and demergers by spin-off, were introduced into the Commercial Companies Code. The aim of these changes was to make restructuring processes faster and cheaper for companies.

Despite the positive changes to company law, the failure to adapt tax legislation to the new forms of restructuring has caused numerous problems. Tax authorities, citing the literal wording of the legislation, consider horizontal mergers to be tax-neutral, which contradicts the legal doctrine that emphasises the need for their neutrality.

The published assumptions of the bill announce the clarification of tax regulations with regard to new forms of restructuring. The planned changes are intended to be favourable to taxpayers, particularly with regard to the determination of income and costs when merging companies without issuing shares, as well as other restructuring activities, such as company transformations, share value reductions or share exchanges. The bill also aims to tidy up and clarify the existing provisions.

## Key changes to the taxation of horizontal mergers and demergers by spin-off

The most important change announced is the exclusion of the application of Article 12(1)(8d) of the Corporate Income Tax Act in the case of horizontal mergers. Currently, this provision makes the tax neutrality of a merger conditional on the issue of shares to the shareholders of the target company, which is not possible in the case of mergers without the issue of shares. In addition, it is planned to equate demergers by spin-off with in-kind contributions to the company, which is intended to ensure tax neutrality for both the company being divided and the company issuing shares.

The bill introduces a number of significant changes to the tax law, divided into several key categories. Among these are changes beneficial to taxpayers:

- **Tax exemptions for non-governmental organisations:** The new legislation would modify tax exemptions for non-governmental organisations operating under the Act on Public Benefit Activity and Volunteerism. All income of these organisations that is intended for public activities, except for economic activities, will be covered by the tax exemption.
- **Thermal modernisation allowances:** A tax relief will be introduced for expenditures incurred by local government units on thermal modernisation projects, known as "umbrella projects". This relief is intended to support local initiatives to improve energy efficiency.
- **Solidarity levy:** Changes will also include the rules for calculating the solidarity levy. Taxpayers will be able to deduct the income constituting the basis for calculating this contribution from losses from previous years, which is a significant simplification.

- **Taxation of foreign controlled companies (CFC):** The bill would clarify and modify the provisions on taxation of foreign controlled companies (CFCs). These changes are aimed at eliminating interpretation doubts and improving the clarity of the regulations.
- **Corporate reorganisations:** In the area of company reorganisations, it is planned to clarify the rules for determining revenues and costs when merging companies without issuing shares. The new laws are intended to facilitate the restructuring process and provide greater tax certainty.

## New regulations to seal the tax system

The bill, which aims to tighten the tax system, introduces a number of changes aimed at increasing the efficiency of tax collection and reducing fraud. Here are the key areas that will be covered by the new regulations:

- **Taxation of family foundations:** As part of the new rules, it is envisaged to tighten up the taxation regulations for family foundations. The changes aim to prevent tax avoidance by individuals who use foundations to manage assets.
- **Employment requirement under IP Box relief:** The IP Box relief, hitherto popular with companies benefiting from preferential taxation of intellectual property income, will be subject to a new employment requirement. This is intended to ensure that only companies actually carrying out operational activities benefit from the relief, and not entities created solely for tax optimisation purposes.
- **Broadening the solidarity levy base:** The changes will also include a broadening of the basis for calculating the solidarity levy. The new provisions assume that income taxed according to the principles of the IP Box relief and benefits received by beneficiaries of

family foundations will be included in the basis of this contribution. This solution is aimed at increasing the solidarity levy revenue and placing a fairer tax burden on high-income earners.

- **Company restructurings under the magnifying glass:** The bill includes changes regarding restructuring activities, including company conversions, share value reductions and share exchanges. The new regulations aim to ensure that these processes are not used for tax avoidance, as well as to increase the transparency and clarity of the applicable rules.
- **Taxation of general partners in limited partnerships and limited joint-stock partnerships:** The new legislation will introduce changes regarding the deduction of flat-rate income tax from the income of a general partner in limited partnerships and limited joint-stock partnerships. The purpose of these changes is to ensure that general partners pay the tax due in a manner more appropriate to the income they receive, in order to counteract excessive tax optimisation.

**New technical changes to the tax legislation**

As part of the latest bill, a number of technical changes are included to clarify and structure the existing tax legislation. The new regulations aim to eliminate ambiguities and improve the application of the law in practice.

**Transfer pricing**

One of the areas that will be covered by the new regulations is transfer pricing. The planned changes aim to clarify the regulations, which will allow for a better understanding and application of the rules on related-party transactions. This will enable companies to avoid potential disputes with tax authorities and improve compliance with existing regulations.



**Lump sum on company income**

Another important element of the changes is the introduction of regulations clarifying the rules for lump-sum taxation on corporate income. The new regulations aim to streamline the use of this form of taxation, which should make it easier for companies to use lump-sum taxation and reduce the risk of errors in tax settlements.

**Grant programmes financed from European funds**

The draft bill also provides a solution to interpretation problems related to grant programmes financed by European funds. The clarification of the definition of 'funds' covered by the tax exemption is intended to eliminate doubts and ensure a more uniform application of the provisions in this regard.

It is eagerly awaited that a full bill clarifying these and other assumptions will be published. According to the announcement, this bill is expected to be presented later this year.

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## B2B CONTRACTS – THE HEAD OF NATIONAL REVENUE ADMINISTRATION TO PREVENT THE CIRCUMVENTION OF THE LAW: ‘AN EXAMPLE OF BOGUS SELF-EMPLOYMENT’

### What is a B2B contract?

Today's labour market is increasingly based on flexible forms of employment, with one popular option among companies being B2B (Business-to-Business) contracts. This type of contract governs the cooperation between two businesses. The most common situation is for a sole trader to enter into a contract with another business – a company or another sole trader.

A distinctive feature of B2B contracts is their civil law nature. This means that it is governed by the Civil Code rather than the Labour Code. It gives both parties more freedom to shape the terms of cooperation, but also requires greater legal awareness and prudence when entering into it.

For many businesses, a B2B contract is an attractive alternative to traditional full-time employment, allowing the flexible adaptation of the terms of cooperation to the specific needs and capabilities of both parties. However, due to the different scope of legal regulations, when entering into this type of contract, it is advisable to carefully analyse its terms and conditions in order to avoid potential legal pitfalls.

### Key differences between a B2B contract and an employment contract

The choice between a B2B contract and an employment contract involves a number of important consequences. In order to enter into a B2B contract, you have to have your own company. In the case of an employment contract, the employee does not need to run a business, their task is merely to provide work for the employer.

One of the main differences between the two forms of cooperation is the assumption of risk. In the case of a B2B contract, the entrepreneur alone is responsible for the success or failure of the business, including possible losses.

Under an employment contract, an employee is protected from financial risk by their employer.

The form of cooperation in the case of a B2B contract offers the entrepreneur greater decision-making and independence, being free to organise their work and execute purchase orders. In an employment contract, it is the employer who decides on the scope of duties, working hours and conditions of employment.

Another important difference is liability. Under a B2B contract, the entrepreneur is responsible for the execution of the order to the other party, with any errors possibly resulting in financial or legal consequences. A salaried employee, on the other hand, has limited liability for damage caused during the course of work, with this liability being clearly defined in the Labour Code.

Tax responsibilities are also different. Businesses settle their own accounts with the tax authorities and pay their own taxes and social security contributions, while an employer is responsible for paying payroll taxes and contributions to social and health insurance for its employees.

A B2B contract also offers the possibility to use subcontractors, which can be an attractive option for businesses involved in larger projects. Under an employment contract, subcontracting is not an option and all duties must be carried out by the employee personally.

Remuneration in a B2B contract usually depends on the outcome of the work; payments can vary in frequency, depending on the agreement between the parties. In an employment contract, remuneration is fixed and paid regularly, usually on a monthly basis.

It is also worth noting that employee entitlements, such as the right to paid leave, overtime or specific working hours, are guaranteed in the employment contract.

Entrepreneurs working under a B2B contract do not enjoy the rights guaranteed by the Labour Code.

### Switching from an employment contract to a B2B contract and vice versa: What is worth knowing?

The decision to switch from an employment contract to a B2B contract, or vice versa, requires careful analysis and consideration, especially when it involves continuing to work with the same entity, such as an existing employer or contractor. One key aspect to consider is that entering into a B2B contract with a former employer prevents you from benefiting from “start-up relief” offered to new businesses, which can have significant financial consequences.

It is equally important to make sure that the nature of the relationship between the parties actually allows for a B2B contract and is not actually an employment contract. Otherwise, authorities such as the State Labour Inspection (PIP) may subject the relationship to detailed scrutiny. Although it is the labour court that ultimately decides on the existence of an employment relationship, the PIP has the right to bring legal action in this case.

Therefore, it is advisable to carefully analyse all the legal aspects and to consult an expert before deciding to switch to a B2B contract. In this way, you can avoid unpleasant surprises and potential legal disputes that may result from an incorrect assessment of the nature of the cooperation.

### Decision of the Head of KAS: Example of the risk of bogus self-employment

On 12 June 2024, the Head of the National Revenue Administration (Krajowa Administracja Skarbowa, KAS) took an important decision by refusing to issue a safeguarding opinion in the case of the applicant, a joint-stock company acting as a parent company.

The case concerned the plans of the parent company, which employed staff under employment contracts. As part of the new strategy, the company intended to establish a limited liability company (a subsidiary) and to terminate the employment contracts with its existing employees.

These employees were then to set up sole-trader businesses and establish cooperation with the daughter company on the basis of B2B contracts. The change would only affect the formal employment structure, while the nature of the work would remain unchanged.



The Head of KAS considered such a state of affairs to be an attempt to avoid tax regulations, which resulted in the refusal to issue a safeguard opinion.


This decision, although issued in a specific individual case, highlights the problem of the phenomenon known as bogus self-employment, i.e. a situation in which seemingly independent businesses in reality provide work under conditions typical of an employment relationship.

Although this decision is not binding on other taxpayers, it is an important warning for companies considering similar activities.

It also highlights that attempts to convert employment contracts into B2B contracts in order to gain tax advantages may be considered unlawful, with serious legal and financial consequences.

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# SHARE TRANSFER NOTICE

Changes in the ownership structure of limited liability companies are a common phenomenon. One of the key elements of this process is an existing shareholder giving notice to the company about the transfer of a share (e.g. when selling one or more shares to another entity) under Article 187 of the Commercial Companies Code. This procedure, although seemingly simple, carries a number of important legal and practical implications which it is worth addressing.

The main purpose of the standard set out in Article 187 of the Commercial Companies Code is to ensure the security of both the company and the participants in the share transfer. First and foremost, it is about clearly establishing who is the formal holder of the rights to the shares in the company. This clarity is crucial for the proper functioning of the company, especially in situations where disputes may arise as to who is actually the shareholder.

The notice serves as a means for the company to determine who is formally entitled to the shares. It is intended to protect the company from potential damage that could arise from any uncertainty as to the status of a shareholder.

## Effectiveness of the share transfer

It is crucial to understand the difference between the actual transfer of a share and the formal notification to the company about the transfer. Although a share must be transferred before notification is made, a failure to notify the company does not affect the validity of the transaction between the parties. This distinction has important legal consequences: the sale of a share becomes legally valid towards third parties regardless of whether and when the company was notified. However, from the perspective of the company and the shareholding rights, the change in ownership of the share only becomes binding upon receipt of official notification. In practice, this means that, until a new shareholder is properly notified, the company is required to recognise the original holder of the share as a shareholder, even if the selling shareholder no longer actually owns it.

## Form and content of the notice

The Commercial Companies Code does not set out a specific form of notification. It may be given by any means, as long as it reaches the company. Given the importance of the legal effect of the notification and the possible difficulties in proving it, it is reasonable to use at least a documentary form. Importantly, the notification should also contain basic information about the event, such as the details of the participants (the seller and the buyer), the number and type of shares transferred and the date on which the shares were transferred to the buyer.

This information is necessary because of the implications of the moment of the transfer with regard to the corporate rights of the shareholder and the obligations (liabilities) of the seller and the buyer.

An additional prerequisite for the effectiveness of the notification is the provision of proof of the share transfer. This requirement may be satisfied by presenting the original of the document constituting the basis for the share transfer, e.g. a share transfer agreement or a deed of donation. If the parties to the transaction do not wish to disclose certain details regarding the share transfer (e.g. the purchase price), an excerpt from the share purchase agreement drawn up by a notary public and containing the essential elements of the agreement is also acceptable.

## Effect of the notification

The moment the company receives the correct notice with proof of the share transfer is of crucial legal importance. From that moment, the transfer of the share becomes effective against the company. This means that the existing shareholder loses its status and the buyer enters into all the rights and obligations of the seller.

It is worth emphasising that, until it receives the correct notification, the company must treat the seller of the share as a shareholder.

This has far-reaching practical consequences.

The buyer, despite actually acquiring the share, has no corporate rights concerning the company until the notification is made. In particular, the buyer cannot vote, claim dividends or exercise other shareholder rights.

## Obligations of the management board upon receipt of the notification


Once it receives the notification, the management board of the company should exercise due diligence to verify the entirety of the notification to ensure it is effective. The scope of the management board's examination should primarily cover formal issues, such as the origin of the notification from the shareholder concerned and verification of the proof of the action (i.e. the share sale agreement, for example). The management board should also take into account the required form of the share transfer transaction and the obligation to obtain any necessary consents.

Once the management board is satisfied that the notification is effective and the evidence of the transaction is unobjectionable, it will proceed to enter the new shareholder in the share register and, on that basis, draw up a new list of shareholders to be submitted to the registry court.

## Summary

Notifying the company about a share transfer is a key element in the process of changing the ownership structure of a limited liability company. Although this procedure may appear to be a formality, it carries significant legal and practical consequences. A proper understanding of the mechanisms of this process is essential for all business participants – both shareholders and company managers.



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# DO YOU HAVE ANY QUESTIONS?

WE LOOK FORWARD TO RECEIVING A CALL  
OR A MESSAGE FROM YOU

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