POLSKI NOWY ŁAD

POLISH NEW ORDER - SELECTED ISSUES

as amended from 01.10.2021

The issues presented below are still in the legislative stage. Draft regulations dated 01.10.2021 with further amendments has been referred to the Senate.

Warsaw, 06.10.2021.

Husarski, Michalski Doradcy Podatkowi Sp. p.
00-844 Warsaw
80/82, Grzybowska loc. 550
KOLMEX building

District Court for the Capital City of Warsaw, XII Commercial Division of the National Court Register
KRS 0000406288

tax@hmdp-kreston.pl
+48 22 661 55 50
www.hmdp.pl
NIP 5272671863
REGON 145948175

Table of contents

1. Eliminating the tax deduction for health care premiums and changing the way they are calculated

The Polish Agreement provides for a change in the rules of being subject to health insurance by entrepreneurs. Persons who earn income from business activity (understood as sole proprietorships registered in CEIDG, general partnerships and partnerships) are to pay health contribution proportionally to their income.
The health contribution calculated according to the new rules will no longer be mostly deductible from PIT. In practice, therefore, the change in the manner of calculating the health contribution can be equated to an effective increase in PIT rates by the value of the health contribution. The deadline for payment of the health care contribution is the 20th of the following month. The contribution will be calculated based on the income from the previous month already settled in terms of tax.

Tax scale 17%/32%
In the case of taxpayers settling their accounts using the tax scale, the health contribution is to be calculated as 9% of the income from business activity as defined in the PIT Act, less the value of paid social insurance contributions (but not less than 9% of the minimum wage). However, a mechanism was introduced to reduce the tax and health contribution burden. It will cover those entrepreneurs whose income (i.e. income minus costs of business activity excluding social security contributions) amounts to PLN 68,412 to PLN 133,692, i.e. more than PLN 11,000. This is the so-called middle class relief, thanks to which the non-deductibility of health contributions will not increase the taxes paid by persons with incomes falling within the above values.

Flat rate 19%
Entrepreneurs settling their accounts using a flat 19% PIT rate will pay a health contribution calculated as 4.9% of their business income within the meaning of the PIT Act, less the value of social insurance contributions paid (but not less than 9% of the minimum wage).

Certain sole proprietorships
Entrepreneurs running their business in the form of one-person limited liability companies, limited partnerships and simple joint stock companies, in which a shareholder's contribution is the provision of work or services, will pay health care contributions in a lump sum determined as 9% of the average monthly salary in the enterprise sector announced by the President of the Central Statistical Office (approx. PLN 520 per month) in the fourth quarter of the previous year.

Lump-sum tax on registered income

Entrepreneurs using the lump sum from registered income will, in turn, pay a health contribution calculated as 9% on:

- 60% of the average monthly salary in the enterprise sector announced by the President of the GUS (approx. PLN 310 per month) - for entrepreneurs with annual revenue up to PLN 60 thousand;
- 100% of the average monthly salary in the enterprise sector announced by the President of the Central Statistical Office (about PLN 520 per month) - for entrepreneurs with an annual revenue between PLN 60,000 and 300,000;
- 180% of the average monthly salary in the enterprise sector announced by the President of the GUS (approx. 930 PLN/month) - for entrepreneurs with annual revenue exceeding 300 thousand PLN.

2. Mandatory health insurance for board members paid by resolution

To the catalog of entities subject to compulsory health insurance, "persons appointed to perform functions pursuant to an act of appointment who receive remuneration on this account" were added.

Taking into account the catalog of entities currently obliged to pay health contributions (in particular - members of supervisory boards), it seems that the new definition is to cover also members of management boards who receive remuneration for performing their function only on the basis of a resolution of the relevant body.

As a consequence, members of the management board remunerated on the basis of resolutions would no longer be subject to mandatory social insurance, however they would be obliged to pay 9% health contribution the basis of which would be the amount of remuneration collected on account of the appointment.

It is possible that compulsory health insurance could also cover proxies on this basis.

3. Electronic books to the tax office

Starting from 2023, PIT and CIT taxpayers, as well as those paying lump sums on registered income, will send structured books and records to the tax office after the end of the year.

Entrepreneurs who are not CIT taxpayers will also do it on a monthly or quarterly basis, but the Minister of Finance will be able to exempt them from this obligation (in a regulation).

This will be comparable to the current JKP_VAT.

4. Taxation of disposal of leased assets

Currently, proceeds from the sale of a tangible or intangible asset after it has been withdrawn from the business or after the business has been liquidated qualify as business income if the sale occurred within 6 years after the withdrawal or liquidation.

However, with respect to movable property used in the course of business under an operating lease (e.g., passenger cars), when the lessee purchases such an asset for personal use, the income from its sale is not qualified as business income, and provided that the sale is made after 6 months from the date of purchase, it is not taxable at all.

After the change, the sale of fixed assets (e.g. cars) bought out of operating lease to private assets, if it takes place within 6 years from withdrawing them from business activity, will generate income from business activity.

5. Depreciation of assets acquired prior to their use in business activities

A change is planned in the determination of the initial value of assets, which are contributed to the company and which were used before the contribution. Currently for the purpose of depreciation of tangible and intangible assets the initial value is the purchase price. Therefore, even if a fixed asset is brought into use after several years, depreciation write-offs can be made on its initial value.

The amendment provides that when an asset is introduced into a business that was previously used by an individual for private purposes, its initial value should be equal to its purchase price or market value if lower than the purchase price.

The purpose of this change is to depreciate an asset from its real value taking into account its wear and tear until it enters the company.

As a result of this change, taxpayers will be making lower depreciation deductions on assets brought into the business.

6. Taxation of rental property

From 1 January 2023, depreciation write-offs on buildings and residential premises will be excluded from tax costs. According to the Ministry of Finance, the value of property increases, therefore there are no grounds for granting preferences. The introduction of the changes will put housing units on an equal footing with land and rights of perpetual usufruct of land, which are also not subject to depreciation. Moreover, residential real estate used for business purposes will not only not be subject to depreciation, but also will not be included in the fixed asset register.

Previously, the decision on tax depreciation of buildings and apartments used for business purposes or leased was left to the discretion of the taxpayer.
The Ministry of Finance, in the justification of the draft, pointed out that as a result of the possibility of accounting for depreciation of rented apartments, particularly in the secondary market, the income therefrom is very often not taxed.

Another important change from the perspective of apartment owners is the necessity to tax private lease with a lump sum. As of 2023, private lease (i.e. lease conducted outside business activity) may no longer be settled in accordance with general rules (i.e. according to the tax scale). It will only be possible to account for it on the basis of a lump-sum tax on registered income.
The draft amendment assumes that all revenues connected with lease (regulated in Article 10 section 1 point 6 of the PIT Act) will be subject to a lump-sum tax and the tax rates will remain at the current level, i.e. 8.5% tax on revenues below PLN 100 thousand and 12.5% on the surplus over that amount.
As a result of the changes, under the apartment tax rules, homeowners will also not be able to deduct from their taxes the costs of repairs or other expenses related to the maintenance of the apartment.

7. Relief on return

Persons who have been foreign tax residents for at least three years and who decide to move their residence to Poland and become Polish tax residents are to gain the opportunity to apply the new tax exemption for four years.
Prior foreign residency will need to be confirmed by foreign tax residency certificates.
This solution will only be aimed at individuals:

- having Polish citizenship, the Card of the Pole or citizenship of an EU or EEA member state or Switzerland other than Poland, or
- resided for a continuous period of at least three years in an EU or EEA Member State, Switzerland, Australia, Chile, Israel, Japan, Canada, Mexico, New Zealand, South Korea, the United Kingdom or the USA, or
- residing continuously for at least five calendar years preceding the last three years.

Income from employment relationship, contracts of mandate and business activity will be exempt, up to the amount not exceeding 85.528 PLN per year.

Lump sum for foreign residents transferring their tax residence to Poland
Persons who have been foreign tax residents for at least five of the six years preceding the year in which they acquired Polish tax resident status, and who choose to relocate their residence to Poland, are to gain the ability to apply a lump sum on foreign income for a period of ten tax years.

The lump-sum tax would cover all income earned outside Poland (with the exception of income subject to taxation on a CFC basis). Its amount, irrespective of the level of income, would be PLN 200 thousand per year.
One of the conditions for using the lump sum is incurring in Poland expenditures for economic growth, development of science and education, protection of cultural heritage or promotion of physical culture in the amount of at least PLN 100 thousand a year on average.
The members of the closest family of a taxpayer taking advantage of the flat rate, understood as a spouse and minor children, will also be able to take advantage of this solution - the flat rate on their foreign income would be lower by half and would amount to PLN 100 thousand per year.

8. Tax abolition - transitional lump sum on income

The tax abolition proposed under the project is addressed to PIT and CIT taxpayers. It will apply to income (revenue) not declared in whole or in part in connection with:

- failure to disclose in whole or in part such income (revenue);
- failure to disclose in whole or in part the source of such income (revenue);
- transferring or holding capital in any form outside Poland, including in a CFC;
- the application of the provisions of double taxation conventions in a manner inconsistent with the context in which the provisions of these conventions are used, with their purpose and with the intentions of the states parties to these conventions;
- unfactual tax residency;
- achieving another tax benefit.

Tax amnesty will not apply to tax benefits resulting from the commission of a tax offence, about which the taxpayer fails to notify the competent authorities in due time. Moreover, it will not be permissible to apply for tax abolition during tax proceedings / tax inspection / customs and fiscal control. The tax rate on income subject to tax abolition will be 8% of the tax base (understood as untaxed income / 25% of the value of capital transferred or held outside Poland / value of tax benefit). In order to benefit from this solution it will be necessary to submit an application to a relevant authority together with payment of a fee (lower than PLN 1,000 and not higher than PLN 3,000). The absolute deadline for filing the application will be between 1 October 2022 and 31 March 2023.

9. Taxation of assets received from liquidation of a partnership

Changes have been introduced with respect to the rules of taxation of income from

a reduction of equity participation in a non-CIT company, receipt of assets in connection with the liquidation of such a company and the withdrawal of a shareholder from such a company.
The following is introduced in the bill:

1) in case of receipt of cash from a reduction of shareholding by a partner - such income will be reduced by the attributable "retained earnings" in a partnership that is not a legal entity (which have already been subject to income tax for the partner) and reduced by the attributable tax deductible costs constituting expenses for the acquisition of shares in the partnership. Such income will be taxed as other non-agricultural business income.
2) in the case of receipt of assets from a reduction of capital participation in a company which is not a legal person in a form other than shares, securities, participation titles in capital funds and derivative financial instruments as well as assets components from the receipt of which Poland loses the right to tax them upon disposal, income will not be subject to taxation at the time of receipt of such assets components. On the other hand, if the assets are disposed of prior to the expiry of the six-year period, the income reduced by the expenses incurred by the company or shareholder to acquire the asset will be taxed. Such income will be taxed as other income from non-agricultural business activity.
3) If a partner in a partnership receives shares, securities, participation titles in capital funds and derivative financial instruments as a result of liquidation of a non-CIT company, if the income on disposal against payment is taxed in Poland, such income will not be taxed at the time of receipt of these assets. On the other hand, if the assets are disposed of (regardless of the time of their possession by the shareholder), such income will be classified as "cash capital" and the income constituting the excess of the income over the expenditures for the acquisition of such assets incurred by the company or shareholder will be taxed.

10. Lump sum - new rates

Changes for persons paying lump sum from registered income and tax card. In particular, the changes will consist in:

- reduction of flat rates
  - for those providing health care services, the flat rate will be 14%,
  - for those providing services in the IT area (e.g., publishing computer game packages, related to network and systems management information technology, etc. - the flat rate will be 12%);

- preventing the use of taxation in the form of a tax card for new taxpayers.

As of 2022, new entrepreneurs will not be able to join this form. On the other hand, persons who currently settle accounts using this method may keep it. The above means that a taxpayer who, for whatever reason, ceases to use tax card taxation, will not be able to return to using this form of taxation (will not be able to apply for tax card taxation again in 2022).

- the exclusion from the tax card of the provision of professional human health services.

11. Holding companies

Introduction of a new entity in the form of a Polish holding company, which is to be an alternative to both the tax capital group and dividend exemptions.
It will be based on two pillars:

- 95% of the amount of dividends received by the holding company from its subsidiaries (domestic or foreign) will be exempt from CIT. With respect to the remaining 5% of the dividend amount, the bill provides for the possibility of deducting tax paid abroad proportionally attributable to that part of the dividend (in the case of foreign subsidiaries) or taxation at 19% rate (in the case of Polish subsidiaries).
- Full CIT exemption of gains on the disposal of shares in subsidiaries, subject to certain conditions:
  - the buyer of shares will be an unrelated entity,
  - the company whose shares will be sold is not a so-called real estate company,
  - the transferor will make a corresponding declaration to the tax authority.

The basic condition for taking advantage of the above preferences will be that the holding company holds at least 10% of the shares in the subsidiary for a minimum of 1 year.
Unlike the existing dividend exemption, the new arrangement will also cover non-EU, EEA and Swiss Confederation entities, and will additionally require that share ownership be maintained for an uninterrupted period of 1 year (rather than 2 years).

12. New solution for thin capitalization

A new way to calculate the limit on debt financing costs (i.e., costs related to obtaining financing, such as interest, fees, premium commissions, the interest portion of a lease installment, penalties and fees for late payment of liabilities, and costs of securing liabilities) included in tax costs.
The literal interpretation of the regulations presented so far, the correctness of which was more than once confirmed by the rulings of the administrative courts,

indicated that the limit of the costs of debt financing was the sum of PLN 3 million and 30% of EBITDA (i.e. the enterprise's operating result). In practice, it meant that the surplus of the costs of debt financing up to PLN 3 million was always a deductible cost, and only in the case of the surplus amount exceeding PLN 3 million, the amount of PLN 3 million and the remaining part of the surplus, provided that it did not exceed 30% of EBITDA - these values were added together. This method was repeatedly questioned by the Ministry of Finance in tax interpretations, which was also confirmed in the justification prepared for the act amending the previous solution.

The postulated changes introduce a completely different way of calculating the debt financing cost limit. Taxpayers will be required to exclude debt financing costs from their deductible expenses to the extent that the excess debt financing costs exceed

3 million or will be calculated according to the formula[(P-Po)-(K-Am-Kfd)]x30%. The algorithm considers values such as:
(P)-the summed value of income from all sources of income from which income is subject to income tax;
(Po) - income of an interest nature (Po);
(K)-the sum of deductible expenses without deductions;
(Am) - depreciation charges included in the tax year as a BUI;
(Kfd) - costs of debt financing not included in the initial value of tangible and intangible fixed assets, which are included in KUP in the tax year.

It should be emphasized that the next edition of the "Polish Order" changes the wording of Article 15c by repealing Article 15e of the CIT Act.
It follows from the essence of Art**.** 15e of the CIT Act that taxpayers are obliged to exclude from tax deductible costs, among others, the costs of acquisition of advisory services, market research, advertising, management and control services, data processing, insurance, guarantees and warranties, and similar benefits incurred directly or indirectly for the benefit of related entities above the statutory limits. In other words, this may cause entities that have previously obtained an APA or an interpretation confirming the Section 15e exemption to be required to tax intangible costs obtained from related parties. It is important to emphasize, however, that under the transition rules, taxpayers who, prior to the end of a tax year that began before January 1, 2022, acquired the right to deduct costs under Article 15e and will retain the right to deduct those costs after December 31, 2021.

13. Consolidation relief

The consolidation relief is an incentive for CIT taxpayers to acquire shares in other

companies. An entrepreneur earning income other than capital gains will be able to deduct from his tax base so-called "qualified expenditures" on the acquisition of shares in a company having a legal personality. However, the maximum amount of such deduction cannot exceed PLN 250 thousand in a tax year. Qualified expenditures for the acquisition of shares in a foreign corporation will include:

- expenditures on legal services related to the acquisition of shares or stocks, including their valuation (due diligence),
- interest,
- taxes directly assessed on that transaction, as well as notary, court and stamp fees.

Such expenses will not include the price paid by the taxpayer for the acquired shares (stocks) and the cost of debt financing related to such acquisition.

You will be eligible for the consolidation tax credit if you meet the following conditions:

1. the company whose shares are acquired has a legal personality and has its registered office or management board in Poland or in another state with which Poland has concluded a double taxation convention containing a legal basis for the tax authority to obtain tax information from the tax authority of that other state;
2. the principal business of such corporation is the same as that of the taxpayer, or the activities of such corporation may reasonably be considered to be activities in furtherance of the taxpayer's business, and the activities of such corporation are not financial activities;
3. this activity, was conducted by the company and by the taxpayer before the date of acquisition of shares in it by the taxpayer for a period of not less than 24 months;
4. in the period of two years before the date of acquisition of shares (stocks) the company and the taxpayer were not related entities;
5. the taxpayer in one transaction acquires shares (stocks) of this company in an amount constituting an absolute majority of the voting rights.

It is worth noting that if within 36 months, counting from the date of acquisition of shares:

- in the company will be disposed of,
- the taxpayer or its successor in interest goes into liquidation,
- is declared bankrupt or
- there are other circumstances provided by law for the termination of the taxpayer's or successor's business,

the taxpayer or its legal successor will be obliged to increase the tax base by the amount of the *deduction* made

14. R&D Tax Credit and IP BOX

Increase in the amount of deductions available under the R&D tax credit

The proposed changes will make it possible to deduct, as part of the R&D tax credit, qualified expenses which were incurred for research and development activities in a given tax year, in the amount of **200% of** personal **costs** incurred for remuneration of the so-called R&D employees (currently 100%, and 150% in research and development centers).

Enabling simultaneous use of the R&D tax credit and the IP Box tax credit

Currently, it is not possible to apply the R&D relief and the IP Box relief simultaneously to the same category of income.

According to the draft, the taxpayer will be able to deduct the costs related to the R&D relief from the income from the so-called qualified intellectual property rights under the IP Box.

Only qualified costs which led to the creation, development or improvement by the taxpayer of qualified IP, from which as a result of commercialization the taxpayer generates income subject to the preferential 5% rate, will be deductible. This means that the deduction of qualified costs under the R&D tax relief will be possible only in relation to those costs that are associated with a given qualified IP.

The change will be important mainly for entities that so far generated 100% of their income from the so-called qualified intellectual property rights within the IP Box. So far, these entities could not in practice benefit from the R&D relief.

Prototype relief

The prototype relief is aimed at taxpayers who will manufacture a new product as a result of their R&D work. This relief will cover the costs incurred at the stage of the so-called trial production, as well as the costs of introducing in order to sell the new product on the market.

Trial production will be understood as the stage of technological start-up of production, during which no further design-construction or engineering work is required. Therefore, the relief will cover the costs of trial production until the start of actual production of the new product.

Marketing a new product, on the other hand, will include actions taken by taxpayers to obtain the necessary documentation to obtain certifications and approvals for the new product, the obtaining of which determines the ability to sell the new product.

The relief will not extend to those certificates and permits that the taxpayer wishes to obtain, for example, to make its offering more attractive or to distinguish itself from its competitors.

Support under the relief will be provided for production of new products (goods),

excluding services. The expenditures indicated in the Act will be shown net of VAT.

Eligible expenses will be deductible if they were actually incurred in the tax year and are not returned to the taxpayer in any form or were not previously deducted from the income tax base. In case of incurring a loss or income lower than allowed under this solution, the taxpayer will be entitled to take advantage of the deduction within the next 6 tax years. However, the value of the deduction cannot exceed 30% of the incurred costs, not more than 10% of the income from non-agricultural business activity.

The PIT and CIT Acts will introduce a new catalog of costs including "costs of trial production" and "costs of launching a new product on the market". The prototype relief, similarly to the R&D relief or IP Box relief, will be reported in the annual return submitted by the taxpayer for the tax year in which the costs were incurred. The deduction will entitle the taxpayer to deduct qualified costs in two consecutive years.

Relief for robotization

The robotization credit will benefit a business that automates its production, i.e., purchases and implements an industrial robot.

According to the announcements, eligible expenses under the robotics credit will include:

- the costs of acquiring brand new industrial robots, machines and peripheral equipment for industrial robots functionally related to them, machines and equipment and other things functionally related to industrial robots that will serve ergonomics and occupational safety with respect to those workplaces where human interaction with an industrial robot will take place; machines, equipment or systems for remote management, diagnosis, monitoring, or servicing of industrial robots, equipment for human-machine interaction with industrial robots;
- costs of acquiring intangible assets necessary for the proper launch and commissioning of industrial robots and other fixed assets;
- costs to acquire training services for industrial robots and other tangible or intangible assets, and
- fees established in the finance lease agreement for industrial robots and other fixed assets.

As a result of the robotization tax credit, the entrepreneur will be entitled to deduct from income an additional 50% of the above indicated costs. To take advantage of this deduction, the expenses should be incurred after January 1, 2022. The deduction will pilot apply to deductible expenses incurred for robotization between 2022 and 2026.

Relief for innovative employees

A so-called innovation workforce tax credit is also planned to make it easier for businesses to compete for professionals with key skills and competencies.

Within this relief, a taxpayer who simultaneously conducts R&D activity and hires employees who in fact devote at least 50% of their working time to this activity, will be entitled to deduct from his income tax advances and lump-sum income tax (deductible from the income of his employees under employment contracts, civil-law contracts or copyrights) the qualified costs which he did not deduct from his income in his annual return under the R&D relief because, for example, he incurred a loss.

The Innovative Workers Credit is intended to allow you to offer better pay conditions to highly skilled workers.

15. Foreign Controlled Companies - CFC

Precise premises constituting a foreign controlled entity (CFC). An entity in which the Polish taxpayer holds, individually or jointly with related entities or with other taxpayers having their place of residence or registered office or management board within the territory of Poland, directly or indirectly, more than 50% of shares in the capital or more than 50% of voting rights in the management of the entity will also be regarded as a CFC. These other taxpayers are taxpayers that hold at least 25% of shares in the capital or at least 25% of voting rights in the management of the entity or 25% of the right to participate in the profit of the company.

The catalog of passive income has also been expanded to include intangible services provided, such as consulting, accounting, market research, rent, interest, etc. constitutes a foreign controlled entity.

In each of the aforementioned cases the prerequisite for identification of the CFC will be the actual charging of the foreign entity with a tax lower by 25% than the tax that would be due in Poland.

2 new types of companies will be recognized as CFCs:

- a company, which will have in its assets assets assets generating passive income of the value corresponding to at least 50% of the value of all assets of the entity, and income of passive nature will be lower than 30% of the value of assets and receivables. The income of this entity will be calculated in a different way, as 8% of the value of the entity's assets will be considered income.
- companies that earn "above-normal" income that is not covered by their assets.

- This income will be determined according to the following algorithm: (b + c +d) x 20% in which each letter stands for: b - the carrying amount of the entity's

assets, c - the entity's annual employment costs d - the accumulated (summed) depreciation to date within the meaning of the accounting regulations. If the entity's income exceeds the value indicated above, it will, subject to other conditions, be considered a CFC.

16. Transfer pricing

Deadlines

- The deadline for preparing local transfer pricing documentation has been extended to the end of the tenth month after the end of the tax year.
- The deadline for attaching a group transfer pricing documentation (Master File) to local transfer pricing documentation has been extended to the end of the twelfth month after the end of the tax year.
- The deadline for filing transfer pricing information has been extended to the end of the eleventh month after the end of the tax year. The information is submitted to the head of the tax office, not to the head of KAS. Moreover, the circle of entities authorized to sign the transfer pricing information has been specified, i.e. a natural person, a person authorized by the foreign entrepreneur to represent him in the branch and the head of the entity within the meaning of the accounting regulations.
- The deadline for a taxpayer to submit local transfer pricing documentation when requested by the tax authority has been extended from 7 to 14 days.
- The tax authority will be entitled to request local documentation within 30 days for controlled transactions for which the taxpayer was exempt from the documentation obligation (financial safe harbour).

Exemptions from the obligation to prepare transfer pricing documentation

- Exemption from the obligation to prepare local transfer pricing documentation for transactions covered by a tax treaty and an investment treaty.
- Exemption from local transfer pricing documentation for safe harbour transactions for loans, credits, bonds and transactions involving low value-added services. For low value-added services, however, "specific documentation" will be needed, showing the type and amount of costs included in the calculation, how the allocation keys were applied and why they were chosen for all related parties using the services, and an analysis of functions, assets and risks.
- Documentation exemption for so-called pure re-invoicing, provided the following conditions are met:
    - no added value is created and the settlement is made without taking into account the margin or profit mark-up;
    - settlement is not directly related to any other controlled transaction;

- settlement occurred immediately upon payment to an unrelated party;
- the related party is not an entity that has its domicile, seat or management in a territory or country that applies harmful tax competition.

If an allocation key is used, it is necessary to have a calculation that includes the type and amount of costs included in the calculation and how it was used and why it was chosen
allocation keys.

Documentation statement

Eliminate the statement on preparation of local transfer pricing documentation as a separate document and integrate the statement with the TPR form.

TPR Form

- TPR will be submitted to a competent head of tax office - so far the competent one was the head of KAS.
- The TPR will be signed by the head of the entity within the meaning of the AoR, while in the case of multi-member bodies it will be a person designated by the body, who is part of that body.

The proposed regulations exclude the ability of an attorney to sign information, except for an attorney who is an advocate, legal advisor, tax advisor, or certified public accountant.

Transfer pricing adjustments

- The ability to make an in minus transfer pricing adjustment based on an accounting receipt from a related party that confirms the transfer pricing adjustment was made in the specified amount.
- Resignation from the obligation to inform about transfer pricing adjustments in the annual return (thus, one of the formal conditions for an effective adjustment has been repealed).

Financial safe harbour mechanism

- The period during which the financial safe harbor eligibility is examined is intended to be the fiscal year.
- It was also proposed to clarify the point at which the loan (credit, bond) agreement should comply with the terms of the financial safe harbour with respect to interest rates, by specifying that these should be met each time the loan (credit, bond) agreement is amended.

Exemption from transfer pricing analysis

- Exemption from the obligation to include in the documentation an analysis

for controlled transactions entered into by related parties that are micro or small businesses within the meaning of the Business Law, and

- Transactions other than controlled transactions concluded with so-called tax havens (direct transactions) or in which the actual owner of the counterparty is a resident of the so-called tax havens (indirect transactions), covered by the documentation obligation.

NSC sanctions

- Whoever, despite their obligation, does not prepare local transfer pricing documentation or does not attach group transfer pricing documentation to the local transfer pricing documentation, is subject to the penalty of a fine of up to 720 daily rates. The same penalty is imposed on anyone who prepares the documentation contrary to the actual state of affairs. The daily rate in 2021 ranges from PLN 93.33 to PLN 37,333.33.
- Whoever, contrary to the obligation, prepares documentation after the deadline shall be subject to a fine of up to 240 daily rates.
- Any person who, despite his obligation, does not submit transfer pricing information to a competent tax authority or who submits information that is inconsistent with the local transfer pricing documentation or the actual state of affairs, shall be subject to a fine of up to 720 times a daily fine.
- Whoever, despite the obligation, submits the information after the deadline is subject to a fine of up to 240 daily rates.

ORD-U vs TPR

In the case of an entity required to prepare TPR transfer pricing information, the entity will be exempt from the obligation to prepare and submit information on agreements entered into with non-residents within the meaning of the foreign exchange law (Form ORD-U).

17. Restructuring activities (mergers, divisions, in-kind contributions, exchange of shares)

Limitation of neutrality of share exchange transactions (PIT and CIT)

Currently, a condition of the neutrality of a share exchange is, among other things, that:

- the acquiring company and the company whose shares are acquired were entities listed in Appendix 3 to the CIT Act or were companies subject to

income tax on their total income, regardless of the place where it is earned, in a state belonging to the European Economic Area other than a European Union member state, and
- the partner was a taxpayer of income tax and the shares contributed by him constituted a contribution in kind intended in whole or in part to increase the share capital of the acquiring company.

It is planned to supplement the above-mentioned conditions with further ones, the fulfilment of which is necessary to maintain tax neutrality:
- the shares disposed of by the shareholder have not been acquired or taken up as a result of another share exchange transaction or allocated earlier as a result of a merger or division of entities, and
- the value of shares acquired by a shareholder, adopted for tax purposes, is not higher than the value of shares sold by this shareholder, which would be adopted for tax purposes if there was no exchange of shares.

Mergers or divisions of companies

A number of changes are planned for the transaction of merger or division of companies, in particular the determination of income and expenses in case of merger or division of companies.

With respect to PIT, in particular, it is planned to limit the use of the postponement of the moment of taxation of income from the division or merger of companies (when, as a result of the division, the assets acquired as a result of the division do not constitute an enterprise or an organized part of an enterprise (OCP)) in the form of a requirement to meet additional conditions:
- the shareholder's share(s) in the acquired or divided company could not have been acquired or taken up in the past as a result of an exchange of shares or could not have been allocated as a result of another merger or division of entities,
- the value of shares (stocks) assigned by the acquiring or newly formed company, adopted by a shareholder for tax purposes, cannot be higher than the value of shares (stocks) in the acquired or divided company, which would be adopted by this shareholder for tax purposes if the merger or division had not taken place.

Limitation on the use of the exemption of in-kind contributions in the form of a business or an organized part thereof

The exemption will be maintained under the condition that the company receiving the contribution accepts for tax purposes the assets constituting the enterprise or its organized part in the value resulting from the tax books of the entity making the contribution. The draft also specifies how income should be determined in the event of paid sale (including in-kind contribution) of shares connected with the in-

kind contribution of an enterprise or OPE. Liberalization of conditions for application of the so-called Estonian CIT
Additionally, from the new year, entities eligible to apply Estonian CIT will also be limited partnerships and limited joint-stock partnerships.

18. Estonian CIT

As a result of the amendments the upper limit of income of taxpayers subject to Estonian CIT at PLN 100,000,000 has been repealed. As a result, the obligation to pay tax surcharge in case this limit is exceeded in any of the years will disappear. The provision which obliged taxpayers to maintain a certain level of capital or salary expenditures was repealed. However, the condition of incurring such expenditures in the act remains, but it will be voluntary for large taxpayers, who due to incurring the indicated capital expenditures will be able to settle income tax at a lower rate.
It is planned to change the deadlines for payment of tax on temporary differences between the tax result and accounting result. Currently, entities entering the Estonian CIT regime are required to pay this difference - also known as a "preliminary adjustment" - by the due date of filing the return for the tax year prior to entering the flat rate. After the introduction of the amendment in question, the obligation to pay this tax will arise only within one month after the last year of the flat rate application, and in case the entity decides to stay in the regime for more than four years - it will expire in full.

19. Place of management

The draft introduces a new definition of holding management board. Entities without a registered office in Poland will be deemed to be Polish taxpayers of CIT if persons or entities sitting in the controlling, constituting or managing bodies of such an entity:

- have their place of residence or seat or management board in the territory of Poland or
- in a factual manner, directly or through other entities manage current affairs of such taxpayer, including on the basis of an agreement creating it, a court decision or other document regulating its establishment or functioning, granted powers of attorney or factual relations between such taxpayer entity and Polish tax residents.

The changes are therefore aimed at limiting the phenomenon of registration by Polish residents of companies in the territory of a foreign country which do not conduct actual business operations there, in which the Polish taxpayer acquires shares and through which his activities are to be continued in Poland, with the

assumption that income is subject to taxation only in the territory of that foreign country.

20. Hidden dividends as expenses that are not tax deductible

The so-called "hidden dividends" were added to the list of expenses that are not tax deductible costs. This term refers to the economic distribution of profits of a CIT taxpayer to a shareholder, which however is not formally a dividend.
For example:

- taxpayer's use of assets owned by the partner or related parties that originally belonged to the taxpayer;
- expenses the amount or timing of which is dependent in any way on the CIT taxpayer making a profit or the amount of that profit;
- expenses that a reasonable taxpayer would not have incurred or would have incurred at a lower rate if comparable performance had been provided by an entity unrelated to the partner.

This provision is scheduled to take effect on 01/01/2023.

21. Minimum tax

The bill would introduce a new tax - a minimum tax.
It is to concern CIT taxpayers registered in Poland, tax capital groups, but also Polish establishments of foreign companies.
Tax will be assessed if the company's share of income is 1% or less or a tax loss is reported on the annual return. Costs resulting from the acquisition or improvement of fixed assets will not be taken into account in calculating the loss and income shares.
The minimum tax is 0.4% of annual income, other than capital gains + 10% of passive expenses, i.e., certain debt financing costs, intangible service costs and a portion of deferred taxes.
The calculation of the new tax will take into account the exemptions and allowances currently in force, such as exemptions for activities in special economic zones or the Polish Investment Zone, and the allowances referred to in the draft of the Polish Order, such as relief for prototyping, robotization.

Excluded from paying the minimum tax will be taxpayers:

- in the first three years of operation;
- whose partners are exclusively individuals and who do not have interests in other entities;
- who have experienced an annual revenue decline of at least 30% in a given

year compared to the previous year;
- being financial enterprises;
- that derive the majority of their non-capital revenues from the operation in international transportation of marine vessels or aircraft or mineral extraction;
- certain group companies of two or more companies, one of which holds for the entire tax year directly 75% of the share capital of another group company;

The minimum tax is a new development and is intended to compensate for reduced state revenue from health care premiums.

22. VAT group settlements for related parties

The bill provides for the introduction of the so-called "VAT group" to the Polish tax system. The VAT group enables financially connected entities to make joint settlements for the purposes of tax on goods and services. This solution is intended for two or more legal entities with their seat in Poland, which, while legally independent, are closely related in financial, economic and organizational terms.
The change is that a supply of goods/services made by a group member to another member of the same group is not subject to VAT.
This provides simplicity and tax neutrality in group accounting.
Conversely, any VAT-taxable transactions carried out by or on behalf of one member of the VAT group in transactions with third parties (outside the group) shall be deemed to be carried out by or on behalf of the entire VAT group. In other words, it is assumed that each time an entity acts individually it acts as a group for VAT purposes.
The VAT group will be formed by at least 2 entities, 1 of which will act as the group representative.
This provision is scheduled to take effect on 01/07/2022.

23. VAT taxation for financial institutions

There will be an option to opt for VAT on selected financial services in the B2B model. Services provided to consumers (retail customers) by financial institutions will continue to be obligatorily exempt from VAT.
Currently, financial services are exempt from VAT by law.
The choice of taxation of financial services will be binding for at least 2 years, after which the choice of VAT exemption can be made again. The necessary condition to benefit from the proposed solution will be the notification of the appropriate head of the tax office on the choice of taxation.
The proposed solutions assume that a taxpayer opting out of the exemption and

electing to be taxed is required to tax all services provided by the entity to the extent:

- transactions, including intermediation, involving currency, bank bills and coins used as legal tender,
- fund management,
- services of providing credit or money lending and the intermediation of such services and the management of credit or money lending by a creditor or lender,
- surety, guarantee and any other security services for financial and insurance transactions, and the intermediation of these services, as well as the management of credit guarantees by a lender or creditor,
- money deposit services, maintenance of money accounts, payment transactions of all kinds, money orders and transfers, debts, cheques and bills of exchange, and intermediary services for these services, ✓ services, including intermediary services involving shares in companies or in entities other than companies, if they have legal personality,
- services involving financial instruments, and brokerage services thereon.

Therefore it is not possible to exempt some services from VAT and to tax only some of them. If the taxpayer decides to tax, he should consistently tax all transactions in the B2B model.

24. Cashless payments for individuals

An upper cash settlement threshold of PLN 20,000 has been introduced, beyond which the consumer, when concluding a transaction with an entrepreneur, will be required to use non-cash forms of payment. Currently, there is no cash payment limit for consumers also in their relationship with an entrepreneur. The Enterprise Law provides for a payment limit of PLN 15,000 only in the B2B model, which does not apply in the B2C and C2C models. This is now set to change, which means that PLN 20 thousand will be the upper payment limit for consumers.

In order to ensure the possibility to choose the most convenient method of payment for a product or service, an entrepreneur will be obliged to ensure the possibility to make payments using non-cash payment instruments. However, this obligation does not apply to entrepreneurs who are not obliged to keep records of sales using cash registers.

Negative tax consequences will be faced by a trader who accepts cash payment from a consumer in excess of PLN 20,000, while the consumer is obliged to make the payment via a payment account. In such a situation, the entrepreneur will generate income in the amount of the payment made without the intermediation of a payment account, without the possibility of recognising the costs of obtaining this income.

Fast VAT refunds for so-called non-cash taxpayers

Another incentive to use non-cash payments is a fast VAT refund for so-called non-cash taxpayers. The tax preference will entail a VAT refund within 15 days of the expiry of the deadline for filing a VAT return or correcting the return.

The following criteria must be met together in order to receive a fast VAT refund:

- A high proportion of total sales including tax (minimum 80% of total sales) recorded using online or virtual cash registers;
- high share of received payments made with the use of payment instruments, including the use of the credit transfer service for sales with tax, recorded with the use of cash registers, documented with receipts indicating that the payment was made with a payment card, by mobile payment or credit transfer (minimum 80% of all sales).

Restrictions for non-custodians on cashless payments

For taxpayers who will not comply with the obligation introduced in the Business Law to remain ready to accept cashless payments, a temporary restriction of certain VAT preferences has been introduced, such as:

- Temporary exclusion of the use of quarterly billing;
- temporary exclusion of the right to a VAT refund within the 25-day period.

In addition, in order to further reduce the shadow economy and strengthen non-cash trading, it was announced that the limit for business-to-business cash transactions would be lowered from PLN 15,000 to PLN 8,000.

25. Investment agreements

A new institution of "investment agreement" has been introduced, to be concluded in the form of an agreement with the Minister of Finance. The investment agreement will be another form of cooperation with the tax administration next to the already operating Co-operation Programme, available for large taxpayers.
The investment agreement may be concluded by entities (or groups of entities) that plan or have just started an investment in the territory of Poland. The minimum investment value is at least PLN 50 million. However, during the first 3 years from the entry into force of the amending act, the value of the investment will be increased to PLN 100 million. The new instrument will constitute an extension of the support for the realization of new investments.
The investment agreement will cover tax consequences of the investment, in particular the assessment of the investment in terms of transfer pricing regulations, an anti-avoidance clause or classification of excise goods and

determination of the correct VAT rate for the good or service. Instead of applying for various acts (individual interpretation, binding rate information, binding excise information, advance pricing agreement and protective opinion) the above mentioned legal and tax issues will be resolved in the agreement. The investment agreement will be a premise excluding determination by the tax authority of the tax liability (amount of loss) to the extent in which the income (loss) shown by the taxpayer was determined in accordance with the given agreement.

The conclusion of the agreement will be based on the voluntary principle, with the Minister of Finance not being obliged to conclude the agreement. Refusal to conclude it will not be subject to review by administrative courts. The initial fee for the application for conclusion of the agreement amounts to PLN 50 thousand per each investor. The conclusion of the agreement itself will be conditional on payment of the main fee in the amount of not less than PLN 100 thousand and not more than PLN 500 thousand.

Consequently, the maximum amount for one investor for concluding the agreement will be PLN 550 thousand. Any change to the agreement will require payment of further costs (maximum PLN 225 thousand). The investment agreement is valid for the period agreed in the agreement, however, not longer than five fiscal years. The investor will be able to terminate the agreement at any time, whereas the Minister of Finance will be able to do so only in strictly defined cases.

26. Anti-avoidance clause

The head of the KAS will be authorised to appoint a single head of the tax office in cases where a tax avoidance mechanism has been identified and the entities participating in the scheme have their registered office (place of residence) in the area covered by more than one head of the tax office. In the opinion of the drafter, this is supposed to increase effectiveness in identifying tax avoidance.

The period of no interest on refunded overpayments due to clause proceedings will be extended.

Moreover, a 6-month period will be introduced for the legal possibility to withdraw an application for a protective opinion with half of the fee refunded. This regulation is to prevent withdrawal of motions at a too advanced stage of examination.

The ban on instigating tax proceedings - after an effective adjustment of the tax return as a result of a tax audit - will not apply if there is a justified assumption that a decision will be issued with the application of an anti-avoidance clause or measures limiting contractual benefits or if the Head of KAS requests the initiation of proceedings after an audit.

27. Temporary attachment of movable property

New tool to increase effectiveness of administrative enforcement. A KAS officer will have the right, in the course of customs and fiscal control, to temporarily seize the controlled person's movable property on account of administrative enforcement conducted against him/her by the head of the tax office on the basis of executive titles covering pecuniary receivables exceeding jointly PLN 10 thousand. The temporary seizure of the controlled person's movables is to apply to the controlled person's movables both in his or her possession and in the possession of another person. Selling the property will not affect the attachment.
Temporary attachment of movable property will not be allowed to last more than 96 hours from the time the officer signs the protocol of temporary attachment of movable property. The temporary seizure will not be made if the obligee shows evidence indicating that the amount due has been paid or that there is no obligation to pay. This is the only means of protection against the officer's action. No remedy is provided for the temporary attachment. Only the approval of the provisional attachment by the head of the tax office will give the obligee the right to file a complaint against the decision of the enforcement authority and then a complaint to the administrative court.

28. Verification Acquisition

In order to combat the "grey market" related to non-recording of sales on cash registers, non-issuance or non-receipt of a fiscal receipt, it is proposed to introduce a new form of control in the form of a check purchase.
Verifying acquisitions will only concern actual verification of the compliance of a verified person with obligations resulting from the tax law by way of purchase of goods or services by the tax authority. This activity will not be a tax inspection or a customs and fiscal control and is to be of a de-formalized nature. Nevertheless, it will not exclude the right of the authority to carry out later a customs and fiscal control or a tax control with regard to the correctness of the obligation to keep records of sales. Verifying acquisition will only concern recording with the use of cash register and issuance of fiscal receipts.
The inspection may result in a note (no violation) or a fine and a report (violation found). Goods purchased in the course of a control acquisition, including the fiscal receipt - if any - will be returned immediately, in accordance with the rule of reciprocal return of goods
and the price paid by the checker.

29. Head of KAS may inform about the risk of participating in the tax carousel

New power for the Head of KAS, who will be able to inform taxpayers about the risk of existence in the turnover of goods or services supplied to the taxpayer or a counterparty of this taxpayer of at least one supplier who may act as a disappearing taxpayer. The sending of such warning will be subject to the discretion of the Head of KAS.
A taxpayer who receives a warning from the head of KAS against a suspicious counterparty will be able to request a tax audit in the scope subject to the warning. As indicated in the justification to the draft, the activities will not be of a mass nature and the taxpayer will not be able to request such information for himself. The tool in question will be optional, i.e. the Head of KAS will not be obliged to inform, even if he notices such a risk in the course of analytical activities. Failure to receive such a letter by the taxpayer will not in any way release him from the obligation to exercise due diligence in contacts with counterparties. In the information warning about the risk of existence of at least one supplier who may be a disappearing taxpayer, the Head of KAS may disclose the contractor's data, which does not violate the provisions on fiscal confidentiality.

30. PIT - general rules

Among the changes there is an increase of the tax free amount to 30 thousand PLN. Currently, as part of the free amount, one can deduct, depending on income, from about PLN 3.1 thousand to PLN 8 thousand. In the case of top earners this amount falls to zero.
The first tax threshold, above which income is taxed at 32 percent, will also increase from the current PLN 85,000 to PLN 120,000.
The rules for deducting health premiums will also change. Currently, 7.75 percent of the 9 percent health premium paid can be deducted from tax. From the new year, it will no longer be possible to deduct part of the premium paid. There will also be a so-called middle class relief, thanks to which the lack of the possibility to deduct health contributions will not increase taxes paid by persons with incomes between PLN 68.4 thousand and PLN 133.6 thousand.

31. PIT - liquidation of joint settlement with a child and new deduction

The possibility of joint settlement with a child has been eliminated. A new tax deduction of PLN 1,500 per year for a single parent was introduced.

32. PIT-0 for families of 4+

PIT-0 for 4+ families is a solution addressed to parents (including foster and legal guardians) who are raising at least 4 children. It is a solution for everyone - regardless of whether they are employees, entrepreneurs, raising children together or single parents. Every parent of at least 4 children, who earns up to 85,528 PLN, will not pay PIT. A parent on the scale will additionally benefit from the increased free amount of PLN 30 thousand. This means no PIT on income up to PLN 115,528. For spouses who settle jointly, the PIT-free amount will be PLN 231,056.

Zero PIT for large families is another element of the government's active pro-family policy. It is a real help for Polish families. What is more, next year parents taking advantage of tax relief for children will be able to receive a refund of not only the amount of social insurance contributions paid, but also the amount of health contributions paid.

33. PIT-0 for seniors

PIT-0 for seniors is an incentive to remain on the labor market. It will be used by salaried employees, contract workers and entrepreneurs (scale, flat rate and lump-sum payments), who despite reaching the retirement age will resign from collecting it and will continue to work. PIT-0 for seniors will work in the same way as PIT-0 for young people, i.e., it will cover annual income up to PLN 85,528. Seniors settling their accounts according to the general rules will still have a free amount of PLN 30 thousand to use. This means that working seniors, who do not receive pensions, will pay tax only after they exceed PLN 115 528 of earnings (PLN 30,000 of the free amount + PLN 85,528 of relief).