May 2020

The bill on Anti-Crisis Shield 4.0 submitted to the Sejm

On 22 May 2020, the bill on subsidization of interest on bank loans to support liquidity of entities affected by COVID-19 and amending certain other acts, commonly referred to as Anti-Crisis Shield 4.0 (hereinafter: "the bill" or "the Shield 4.0"), was submitted to the lower house of the Polish Parliament.

The summary of the key proposals included therein can be found below.

Loan subsidies

The bill sets out the rules for subsidization of interest on bank loans granted under contracts concluded by 31 December 2020 to business entities whose financial liquidity deteriorated following the negative economic consequences of the COVID-19 pandemic.

The subsidies will apply to revolving and non-revolving working capital loans granted in PLN.

Subsidized loans may be applied for by entities:

1) whose businesses, as at 31 December 2019, were not considered to be "undertakings in difficulty", within the meaning of Commission Regulation (EU) No 651/2014;
2) who conduct business activity in Poland or have suspended their business activity after 1 February 2020 due to the negative impacts of the COVID-19 spread;
3) who have not taken out any other loan provided for by Anti-Crisis Shield regulations;
4) who lost liquidity, understood as the company's capacity to meet its liabilities when they fall due, or are at risk of losing it as a result of the negative impacts of the COVID-19 spread.

The subsidy shall cover:

1) a portion of interest due to the bank, which in the case of:
   a) micro, small and medium-sized businesses shall amount to 2 percentage points;
   b) other types of businesses shall amount to 1 percentage point;
2) the total amount of interest due to the bank, where the interest rate on the subsidized loan does not exceed the above-indicated amounts.

A subsidized loan may be applied for at banks dealing with such types of loans (a full list of the support scheme-involved banks will be available on the website of Bank Gospodarstwa Krajowego).

The subsidies will constitute State aid to remedy a serious disturbance in the economy of a Member State, as stipulated by Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Amendments to the salary subsidization scheme

Additionally, the Shield 4.0 proposes amendments to the salary subsidization scheme, including extension of support provided from the Guaranteed Employee Benefits Fund to entities, which despite a decline in economic turnover due to the COVID-19 pandemic have not introduced economic downtime, downtime as provided for by Article 81 of the Labor Code or reduced working hours.

The subsidy may cover up to the half of the employees' salaries, but not more than 40 percent of the average monthly salary announced by the Statistical Office for the previous quarter pursuant to the provisions on old-age and disability pensions from the Social Insurance Fund, applicable as at the day of submitting the subsidy application.

Adjustments to the bad-debt relief provisions

The bill provides that the taxpayers affected by negative economic consequences of the COVID-19 pandemic may apply the bad-debt relief in the scope of deduction of debt for the period starting when 30 days have elapsed since the date of payment specified on the invoice (bill) or in the contract, up to the date on which the debt was settled or expensed (currently, the CIT and PIT acts settle it at 90 days from the specified date of payment). Note that the proposed amendment applies solely to creditors. For debtors, the period for making the amendment remains the same and amounts to 90 days.

Amendments related to the Polish Investment Zone

Other provisions introduced by the Shield 4.0 aim at adjusting the New Investment Support Act (regulating the functioning of the Polish Investment Zone) to Commission Regulation (EU) No 651/2014, namely through:

- Extending the definition of a 'new investment' to include the acquisition of assets belonging to a plant that has been closed or would have been closed had it not been for the acquisition, the assets being acquired by an entity unrelated to the seller and the purchase of the company's shares or stocks excluded (so that the investor will be able to take over the plant at the verge of bankruptcy and secure the existing jobs).
- Enabling the recognition of a new investment as a qualifying cost (under certain conditions) also after the investment completion date to include the time of further use of the investment, rent, lease or financial lease, which are usually spread over a longer period.

Other changes

The bill brings about also other significant tax and legal measures, including:

- Provisions aimed at protecting strategic Polish companies (i.e. companies which are in control of critical infrastructure), whose revenues from sales or services in any of the last two financial years exceeded EUR 10,000,000, from hostile takeovers by entities from outside the EU or EEA. Non-EU and non-EEA investors will have to notify the purchase of such a company or its shares to the Polish Office of Competition and Consumer Protection. The decision on whether a given takeover was hostile will be made by the President of the Office, who will have three months to issue the decision authorizing the transaction. The new solutions are to stay valid for 2 years.
- Amendments related to employees, including reduction of the applicable working hours by 20 percent (but not more than to half-time) or the possibility of unilateral termination of the agreement on non-competition after termination of employment.
- Extended suspension of deadlines for reporting domestic tax arrangements to the 30th day after the date of recall of the state of epidemic or epidemic threat (in the case of cross-border arrangements the deadline suspension is to last no longer than until 30 June 2020).
- Exemption from income tax on donations made to centers for single mothers with underage children and pregnant women, night shelters, shelters for the homeless, including those providing care services, support centers, family support centers and social assistance centers.
- Possibility to deduct contractual penalties and damages, provided that the defect in the goods delivered, works or services performed, a delay in the delivery of goods free of defects or a delay in the removal of defects in goods or works and services performed, was due the state of epidemic threat or the state of epidemic.
- Excluding the possibility of submitting paper applications for a relief on social security contributions, downtime benefit and exemption from the obligation to pay social security contributions.
- Extension of the deadline for paying the annual perpetual usufruct fee for 2020 to 31 January 2021.

The bill is now assessed by the Sejm. As per the applicable rules, it shall enter into force the day after its announcement.

Please contact us for further information

If you would like to learn more about the issue discussed, please do not hesitate to contact us at mampytanie@kpmg.pl

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KPMG offices

Warsaw
ul. Inflancka 4a
00-189 Warsaw
Tel. : +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Gdańsk
al. Zwycięstwa 13a
80-219 Gdańsk
Tel. : +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków
ul. Opolska 114
31-323 Kraków
Tel. : +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Katowice
ul. Francuska 36
40-028 Katowice
Tel. : +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań
ul. Roosevelta 22
60-829 Poznań
Tel. : +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Łódź
ul. Składowa 35
90-127 Łódź
Tel. : +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Wrocław
ul. Szczytnicka 11
50-382 Wrocław
Tel. : +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl

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