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The bill on Anti-Crisis Shield 4.0: amendments to the salary subsidization scheme

On 22 May 2020, the government bill on Subsidization of Interest on Bank Loans to Support Liquidity of Entities Affected by COVID-19 and Amending Certain Other Acts (hereinafter: "the Draft Shield 4.0"), constituting an extension to the Act of 2 March 2020 on Special Arrangements for the Prevention, Control and Management of COVID-19, Other Infectious Diseases and the Resulting Emergencies (hereinafter: "the Anti-Crisis Act"), was submitted to the lower house of the Polish Parliament.

The review of the key measures related to the salary subsidization scheme included therein can be found below.

Clarification of the definition of 'decline in economic turnover'

Following the expectations of business owners, the Draft Shield 4.0 clarifies the method of calculating a decline in economic turnover for the purposes of applying for employee salary subsidization from the Guaranteed Employee Benefits Fund ("GEBF") (Article 15g of the Anti-Crisis Act) and for partial subsidization of salaries by the District Governor [starosta] (Article 15zzb and Article 15zzc respectively).

Under the currently applicable provisions, a decline in turnover (being a key prerequisite for being enrolled in the support scheme) may not be calculated from 1 January 2020, but from 2 January 2020 instead.

The explanation for the amendment is that trial balances (e.g. for bookkeeping accounts) are made at the end of the reporting period at least once a month as at the end of the given month. This may suggest that the legislator points to the bookkeeping approach as to the appropriate method of calculating a decline in turnover.

The Draft Shield 4.0 provides that the **decline in economic turnover may be calculated starting from 1 January 2020**, which will make it easier for entities to conduct comparative analyses between individual periods.

Decrease of salaries even by 50 percent

The Draft Shield 4.0 offers a range of new measures enabling employers to reduce their employees' working hours and, consequently, salaries. Importantly, **the measures may be taken only with the employee's consent**. They may be applied by employers who, as a result of the COVID-19 pandemic, suffered a significant increase in payroll-related burdens.

Pursuant to Article 15gb of the Draft Shield 4.0, the employer may:

- **reduce the employee's working hours by up to 20 percent** (yet no more than to half-time), however, the reduced employee's salary may not be lower than the minimum salary for 2020 (i.e. PLN 2600 gross per full-time) taking into account the applicable working hours;

- **reduce the employee's salary by up to 50 percent (under the economic downtime regime)**, however, the reduced employee's salary paid out may not be lower than the minimum salary for 2020 (i.e. PLN 2600 gross per full-time) taking into account the applicable working hours.

A 'significant increase in payroll-related burdens' shall be defined as an increase in the quotient of two values, namely:

- **employees' salary costs**, including social security contributions paid by the employer; and
- **revenue from the sale of goods and services.**

The solution is to be applied by employers for whom the values specified above **increased by a minimum of 5 percent on a month-by-month basis.**

Application of this solution under the Draft Shield 4.0 is restricted by a provision stating that if the quotient of employees' salary costs, including social security contributions paid by the employer, and revenue from the sale of goods or services in the month in which **a significant increase in payroll-related burdens was suffered by the employer is less than 0.3, the use of the solution shall be excluded.**

Subsidies from GEBF without reducing working hours

Pursuant to Article 15g of the Anti-Crisis Act, business owners may apply for subsidies from the Guaranteed Employee Benefits

Fund covering salaries of employees affected by economic downtime or reduced working hours due to the COVID-19 outbreak. Leaving the situation of downtime aside, as it rarely occurs in practice, the prerequisite for being granted the subsidy is reduction of working time by a maximum of 20 percent, however, no more than to half-time, subject to previous agreement with trade union or duly appointed representatives of employees.

One of the key proposals included in the Draft Shield 4.0 is the **possibility to obtain a subsidy from GEBF without the need to cover employees with reduced working time or downtime** (the period of non-performance of duties).

Under the Draft Shield 4.0, the GEBF subsidy may be granted to an entity, provided that it suffered a decline in economic turnover in the amount indicated in the current regulations, i.e.:

- of at least 15 percent – in any two consecutive months of 2020, compared to the corresponding two consecutive months of the previous year; or

- of at least 25 percent – in any month of 2020, compared to the previous month.

The subsidy may cover half of the employee's salary, but not more than 40 percent of the average monthly salary.

However, the employees whose salaries exceed 300 percent of the average monthly salary (currently: PLN 15,994.41) shall be excluded from this support scheme.

The subsidy shall also cover social security contributions paid by the employers for their employees.

Entry into force of the bill would mean that the support scheme could be accessed by business owners who have recorded a decline in turnover but have not been able to reduce their employees' working time. Additionally, it would simplify and facilitate the procedure for getting subsidies from GEBF, namely by eliminating the need to conclude an agreement with representatives of the employees.

Exclusion of monthly statements in the District Governor support scheme

Under the currently applicable provisions, the subsidies provided to SMEs based on an agreement concluded with the District Governor are paid **monthly, after the business owner submits a statement of employment in a given month** and the cost of salary of each employee plus the social security contributions due, as of the last day of the month for which the subsidy is paid.

The bill provides for **abolition of the obligatory submission of monthly statements**. Under the draft provisions, the subsidy shall be paid out based on the information on employment and salaries submitted in the first statement filed along with the application for the subsidy. However, the business owners shall be obliged to report the District Governor's office on every change made to the abovementioned data.

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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