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In this Issue

Introduction

Dear all,

It is our pleasure to bring you this latest issue of PITPoint Magazine.

2021 comes with unprecedented changes in tax regulations, being of particular interest to employers and employees. Given the numerous sources of new and amended regulations, it becomes increasingly difficult to trudge through the muddy waters of tax. In fact, new regulations go hand in hand with amendments and additional provisions implemented already in 2020, under the special COVID-19 Act, general rulings issued by the Minister of Finance, and other instruments.

The main goal of this issue of PITPoint Magazine is to provide an overview of changes having the key personal income tax and social security implications.

Thus, we will analyse the issues related to amendments and additional provisions implemented in PIT throughout 2020, pursuant to the special COVID-19 Act. We will also have a closer look at the new provisions on posting workers and the unfavourable changes made to the scope of application of the abolition relief.

We will not forget about the new obligation to provide the Polish Social Security Administration with information on the concluded specific task contracts, in force as of 2021.

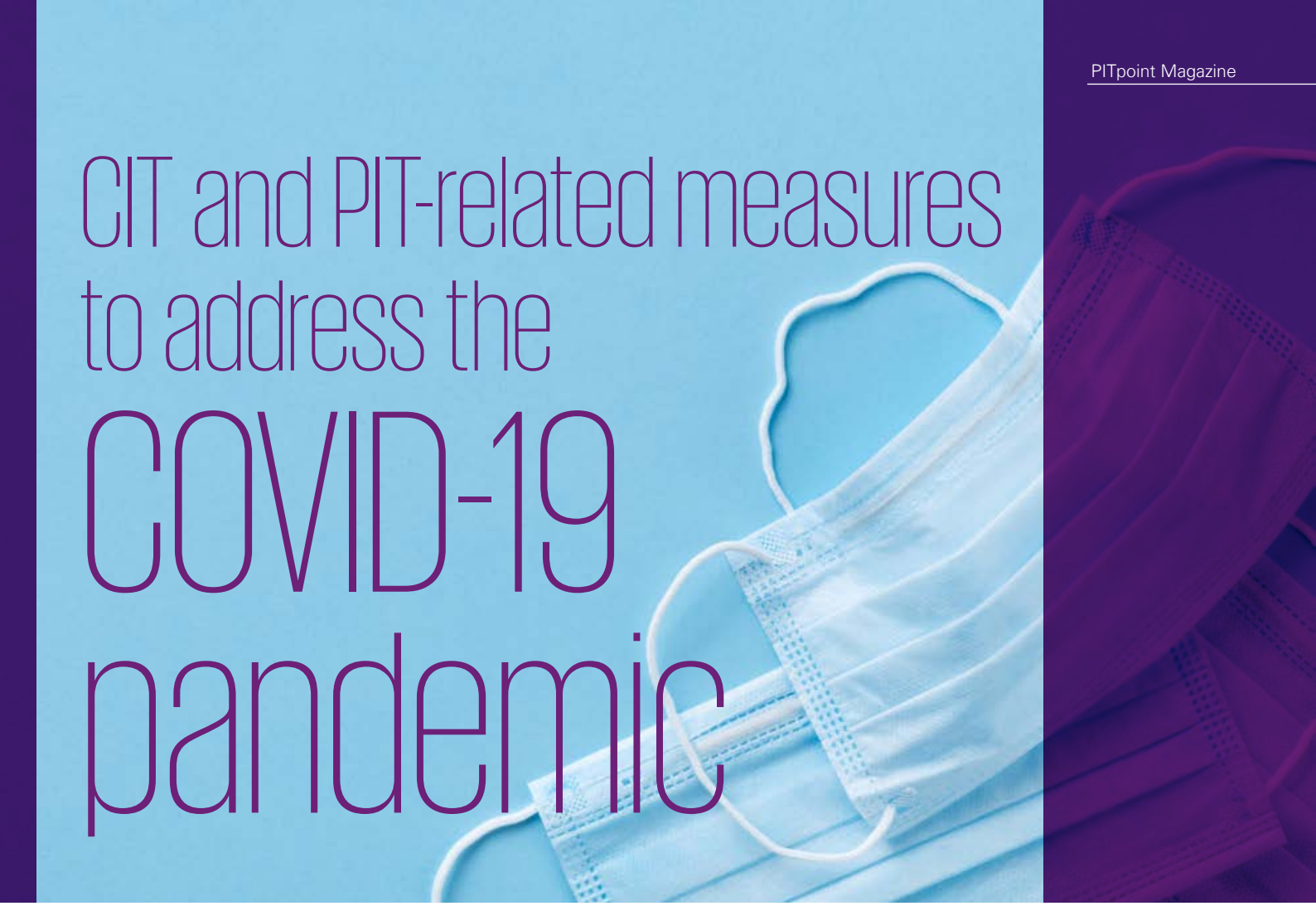
Moreover, we will explore the topic of general rulings of the Minister of Finance on 50-percent tax-deductible costs and car fringe benefits, issued in 2020.

Finally, we will shed some light on the amended provisions on lump-sum taxation of recorded revenues and the fixed amount tax.

We hope that our insight will help you better assess your tax obligations and the consequences they are to bring.

We wish you a pleasant read.

CIT and PIT-related measures to address the COVID-19 pandemic



Polish authorities passed a raft of measures related to personal and corporate income tax aimed at alleviating the impact of COVID-19 pandemic. The goal behind the new regulations is to encourage active support of the fight against the pandemic, but also to reduce the tax and insurance burden on a specific group of taxpayers.

DONATIONS TO COUNTERACT THE COVID-19 PANDEMIC

Under the amended PIT provisions, taxpayers may now deduct their income by the amounts donated toward COVID-19 response efforts. This relates mainly to donations made to healthcare providers engaged in counteracting the pandemic, but also to centres for single mothers with underage children and pregnant women, night shelters, shelters for the homeless, social assistance centres etc. The amount of the deduction depends on the date on which the donation was made. For donations made from 1 October 2020 to 31 December 2020, an amount corresponding to 200% of the donation may be deducted, for donations made from 1 January 2021 to 31 March 2021, an amount corresponding to 150% of the donation may be deducted, while for donations made from 1 April 2021 until the end of the month in which the state of epidemic is revoked, an amount equal to the value of the donation may be deducted. The relevant provisions in their current wording do not provide for a deadline of the deduction application. In fact, the donation can be deducted not only in the annual settlement, but also at an earlier stage, when calculating the tax advance due for the month in which the donation was made. Importantly, the amount of donations made to counteract the COVID-19 pandemic may exceed the cap of 6% of taxable income, set on other donations, e.g. those made to public benefit or religious organizations.

INCREASED LIMITS ON OBJECTIVE TAX EXEMPTIONS

Another change brought by the Anti-Crisis Shield regulations is an increase in limits of employees' benefits exempt from public-law liabilities, in particular in form of financial aid. The amount of the special assistance benefits paid out in connection with a fortuitous event, natural disaster, long-term illness or death, financed from sources other than the Social Fund, the Company's Social Benefits Fund or trade union funds, which is covered by tax exemption, was increased from PLN 6,000 to PLN 10,000. The amount of the exemption for other

allowances increased from PLN 1,000 to PLN 3,000. Moreover, the limit of benefits for employees' welfare, paid out from the Company's Social Benefits Fund or the trade union funds increased from PLN 1,000 to PLN 2,000. Furthermore, the threshold applicable to subsidies for holiday, stay in health resorts, rehabilitation and training facilities, as well as stay in treatment and care facilities was increased from PLN 2,000 to PLN 3,000. The introduced changes are temporary and will remain in force until the end of the tax year following the year in which the state of epidemic is revoked in Poland. The amendments are likely to significantly contribute to diminishing tax burdens, however, it is evident they are directed only at a specific group of employees. In fact, the increased thresholds will not have any influence on the situation of employees who do not use the benefits offered by the employer along with other forms of funding. Importantly, the amendments relate solely to the caps set on the amounts of benefits and not to the rules based on which they are granted. Perhaps it would be more reasonable to introduce solutions allowing for income tax exemption on benefits paid to a wider group of employees, e.g. to make up for increased labour expenses incurred through remote work, as it often happens that work from home generates supplementary costs, stemming from electricity consumption, arranging the working space etc.

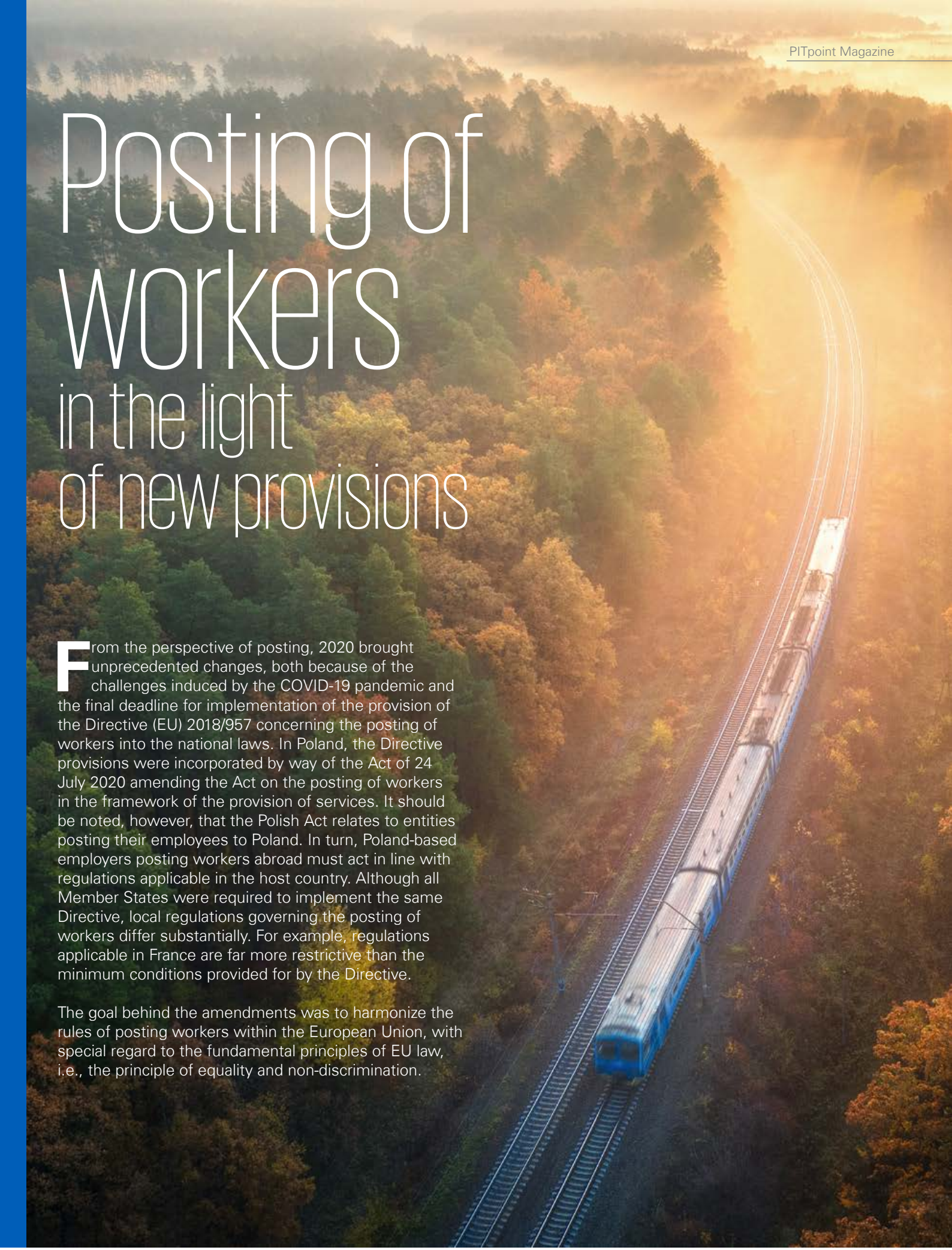
EXEMPTION FROM THE OBLIGATION TO PAY ZUS CONTRIBUTIONS

One of the amendments that seem of key importance to business in times of the COVID-19 pandemic is the exemption from the obligation to pay social security and health insurance contributions. Currently, the exemption applies to the contributions due for July, August, September and November 2020. Importantly, it may be used only by entities performing certain business activities, at least in theory, most affected by the pandemic and the resulting economic crisis. Moreover, the exemption is targeted at entrepreneurs who run registered business activity long enough and whose revenues have decreased accordingly due to the pandemic. The exemption may be applied for to ZUS (Polish Social Security Administration) starting from 30 December 2020.

DEFERRED ADVANCE PAYMENTS FOR INCOME TAX

Another measure aimed alleviating the impact of the COVID-19 pandemic on business, consists in deferring advance payments for income tax on remunerations paid out under employment relationship, contracts of mandate and royalties due for October, November and December. Just as in the case of ZUS exemptions, the deferment covers a well-specified group of businesses. The deadlines for making the payments were extended to May, June and July 2021 respectively. Although this measure does not directly reduce the public-law burdens, it significantly improves the financial liquidity of businesses, shifting expenses that would be incurred in the period of the greatest crisis, to the period in which, hopefully, the economic situation will slowly get back to normal. ■

Posting of workers in the light of new provisions



From the perspective of posting, 2020 brought unprecedented changes, both because of the challenges induced by the COVID-19 pandemic and the final deadline for implementation of the provision of the Directive (EU) 2018/957 concerning the posting of workers into the national laws. In Poland, the Directive provisions were incorporated by way of the Act of 24 July 2020 amending the Act on the posting of workers in the framework of the provision of services. It should be noted, however, that the Polish Act relates to entities posting their employees to Poland. In turn, Poland-based employers posting workers abroad must act in line with regulations applicable in the host country. Although all Member States were required to implement the same Directive, local regulations governing the posting of workers differ substantially. For example, regulations applicable in France are far more restrictive than the minimum conditions provided for by the Directive.

The goal behind the amendments was to harmonize the rules of posting workers within the European Union, with special regard to the fundamental principles of EU law, i.e., the principle of equality and non-discrimination.

EQUAL PAY – REMUNERATION DEPENDENT ON THE COUNTRY OF POSTING

Harmonization of the regulations on employees' remuneration was a necessary step, especially given that the growing discrepancies in pays and labour costs increased the attractiveness of posting to companies. As a result, in the years 2010-2014 the number of posted workers surged by 44.4%. The amendments are to ensure equality of treatment in terms of remuneration. In other words, a posted worker shall be remunerated on the same terms as the comparable permanent workers in the host State ("equal pay for equal work").

The duty of the host States is to ensure that a posted worker receives from the posting company a remuneration calculated in line with the applicable law, collective agreements and common practices in force in the host State. Furthermore, the obligation goes beyond the equal pay, extending to all benefits received by local employees under the applicable law. The previous practice of calculating posted workers' remuneration based on minimum rates applicable in host Member States is now unacceptable. This means that the employer must now possess an extensive knowledge and understanding of the rules of remuneration in force in the host country.

Every Member State is obliged to publish the information on the terms of remuneration (and other conditions of employment) applicable to postings on a single official national website. In the case of an audit, inaccurate or outdated information may constitute an attenuating circumstance. Nevertheless, many implementations of this obligation bring disappointment. Some of the national websites (e.g. the German one) contain many detailed and useful information, also available in English. Unfortunately, some countries (including Poland) provide fragmented data, only to a certain extent available in a language other than the national one.

12 MONTHS FOR POSTING, NOT PER POSTED WORKER

Prior to the amendments, the posting period was not subject to major restrictions. Now, under the amended provisions, the period of posting is limited to 12 months, with a possibility of extension by 6 months (to the total of 18 months), where the posting company submits a motivated notification.

Importantly, the duration of the posting shall also cover the period for which the posted worker is replaced by another posted worker performing the same task at the same place. This means that the 12-month posting period is linked to the duties performed during the posting and not to a single posted employee. In other words, if the same duties are performed by a number of employees posted in the same country, they will be covered by a single posting period. Yet, the provisions

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do not clarify if 'workers replacing each other' mean only the employees posted to a given country directly one after another. Therefore, there exists a doubt whether in case of a worker posted to a Member State a few months after the first worker - who has performed the same job - returns from the host country we are dealing with the same single posting and thus the same time limit, or whether it means that a new posting period began. In the first case, the question remains whether the deadline is suspended for the period in which the posting does not take place or whether it runs continuously from the first day of posting. Sooner or later these and similar issues will become the subject of requests for preliminary rulings submitted by national courts to the EU Court of Justice.

After 12 (18) months of continuous posting of employees by the same employer to perform the same duties, all provisions of the labour law resulting from the regulations, collective agreements and common practice in force will apply. They will cover the employee posted to the given country when the set deadline falls, along with every subsequent employee who will replace them. For application of the local labour law, the posting employer, the task assigned, and the place of its performance must remain the same.

It should be noted, however, that the requirement to comply with the host State law does not apply to situations where the terms and conditions of employment in the posting country are more favourable to the posted worker.

NEW ROLE OF THE NATIONAL LABOUR INSPECTORATE

Under the Act implementing the Posting of Workers Directive, the National Labour Inspectorate gained a number of new powers. Under the new regulations, the authority shall assume the function of a liaison responsible for cooperation with competent authorities from other States in terms of providing information on the conditions of employment of workers posted to Poland, reporting irregularities and offenses related to the posting, requesting inspections and carrying out audits at the request of authorities of other Member States.

MOBILITY IMPLICATIONS

Undoubtedly, the new provisions will importantly increase the administrative burden on posting employers and, consequently, the associated posting costs. This means that each posting must be carefully planned by the employer and then meticulously supervised. The points of particular interest to posting companies seem the rules of remuneration and other non-wage aspects of employment applicable in the host country. ■

Will the limitation of abolition relief impact mobile workforce?

ABOLITION RELIEF IN PRACTICE

The raft of changes brought by the Act amending the Personal Income Tax Act, signed by the President on 28 November 2020, includes imposition of a limit on deducting the relief referred to in Article 27g of the Act of 26 July 1991 on Personal Income Tax (hereinafter: PIT Act).

Introduced in 2008 by way of article 27g of the PIT Act, the abolition relief, in its current form, led to the equalization of the tax situation of individuals working in countries applying different methods of avoiding double taxation in their dealings with Poland, namely the proportional tax-credit method and the exemption with progression method. In practice, abolition relief corrected the difference between a lower tax paid

abroad and the tax which would be calculated in a higher amount in Poland on the same income. In other words, thanks to the abolition relief, individuals earning their income outside Poland did not have to pay the difference between the foreign tax and the tax due in Poland.

In light of the above, the only "side effect" of earning income in countries applying such methods was to increase the effective tax rate on income taxable in Poland, just as in the case of income to which the exemption with progression method applied.

It is worth noting that in a situation where a Polish tax resident did not obtain any income from sources located in Poland, taking advantage of the abolition relief equalized the amount of their tax liability to zero.

THE GOAL BEHIND THE AMENDMENTS

According to the explanatory memorandum to the bill, "*the goal behind the planned measures, aimed at tightening up the Polish personal income tax system, is to limit the application of the abolition relief referred to in Article 27g of the PIT Act. The essence of the abolition relief is to eliminate the effect of the proportional tax-credit method in relation to selected sources of income and to equalize their effective taxation with the outcomes of the exemption with progression method. Since the introduction of the abolition relief to the Polish tax system, the grounds for its application have changed significantly. Firstly, the awareness of taxpayers as to the tax consequences of earning income in another country has increased. Secondly, it was noticed that the abolition relief, along with provisions of double tax treaties, started to be used as tools of aggressive tax policies. Consequently, it gave rise to the need of changing the method of abolition relief application, so that it would be used only by those taxpayers who earn the lowest incomes, and therefore are in the biggest need of reducing their tax burden*".

Given the above, it should be emphasized that the use of the abolition relief in its past shape led to situations where some taxpayers were exempt from the tax in the country where the income was earned, while in Poland, under the abolition relief, their tax liability amounted to zero.

Furthermore, following Poland's accession to MLI, many double tax treaties signed by Poland before 2018 were amended to replace the exemption with progression method (up to then used, among others, in the conventions singed with the UK, Ireland and Belgium) with the proportional tax-credit method, thus extending the application of the latter.

SIGNIFICANCE OF THE AMENDMENTS AND APPLICATION OF THE ABOLITION RELIEF FROM 2021

Under the amended Article 27g of the PIT Act, the deduction under abolition relief may not exceed the tax-reducing amount i.e. PLN 1,360.

Therefore, if the tax on income paid abroad is lower by more than PLN 1,360 than the value of tax calculated on the same amount in Poland, the taxpayer will be obliged to pay the outstanding tax in Poland. In other words, once the application of abolition relief becomes limited, in certain cases, individuals earning their income outside Poland will have to pay the difference between the foreign tax and the tax due in Poland.

In addition, the relief will be unavailable to individuals performing work or services outside the country's land territory (including seafarers and offshore workers).

At this point, it should be noted that there exist certain categories of income exempted in the country where it was earned (i.e. income related to accommodation, allowances, travel costs) which in Poland constitutes income, thus significantly increasing the taxation of material benefits for mobile workers. An example can be found below.

EXAMPLE:

Settlement for 2020

The employee's income in PL is	PLN 95,000
The employee's income in the Netherlands (including benefits in kind) is	PLN 223,000
Tax base after deduction of ZUS contributions and tax-deductible costs is	PLN 292,000
The calculated tax is	PLN 80,844
The tax paid abroad is	PLN 10,457
The abolition relief amounts to	PLN 47,469
The contributions for health insurance amount to	PLN 22,919
The tax obligation amounts to	PLN 0

Settlement for 2021

The employee's income in PL is	PLN 95,000
The employee's income in the Netherlands (including benefits in kind) is	PLN 223,000
Tax base after deduction of ZUS contributions and tax-deductible costs is	PLN 292,000
The calculated tax is	PLN 80,844
The tax paid abroad is	PLN 10,457
The abolition relief amounts to	PLN 1,360
The contributions for health insurance amount to	PLN 22,919
The tax obligation amounts to	PLN 46,109

Reporting specific task contracts

The many amendments brought to the Polish legislation in 2020 to respond to the challenges caused by the global COVID-19 pandemic includes modifications implemented by way of Article 22 of the Act of 31 March 2020 amending the Act on Special Arrangements for the Prevention, Control and Management of COVID-19, Other Infectious Diseases and the Resulting Emergencies, and Certain Other Acts (hereinafter: the COVID-19 Act) into the Act of 13 October 1998 on the Social Insurance System (Journal of Laws of 2020, item 266), which imposed on economic operators the requirement of notifying the concluded specific task contracts to the Polish Social Security Administration (ZUS).

At present, specific task contracts are not entered on the list of contracts concluded by individuals in the territory of the Republic of Poland subject to compulsory pension and disability insurance, provided for by Article 6 of the Act on the Social Insurance System, except for specific task contracts concluded between the employer and the employee. Contracts of such kinds are covered by compulsory pension and disability insurance, under Article 9(4b) of the Act on the Social Insurance System. Additionally, pursuant to Article 8(2a) thereof, an individual entering into such contract shall be treated as an employee.

Thus, the remitter is released from the obligation to collect contributions for pension and disability insurance on the concluded specific task contracts. However, starting from January 2021, under the new regulations, contribution remitters, including natural persons, acting as contracting parties will be required to notify the Polish Social Security Administration of "each contract for specific task concluded, provided that it is entered into with a person who is not their employee or that it is not concluded for performance of work for the employer, by whom they are employed". The new obligation was introduced to Article 36(17) of the Act on the Social Insurance system by way of Article 22 of the COVID-19

Act. Both the remitter and the natural person have to fulfil it within 7 days from the date of concluding the contract.

Based on the information provided, the Polish Social Security Administration will keep records of all the specific task contracts concluded, the list of which will then be available on the contribution remitter's account.

Furthermore, pursuant to Article 50(17)(5) introduced to the Act on the Social Insurance System, ZUS shall "provide the Minister competent for public finance and the bodies of the National Revenue Administration, upon their request, with the following data: [...] concerning contracts for specific task referred to in Article 36(17)".

Information must be provided via ZUS RUD form, which shall be filed by the remitter or the natural person for each specific task contract entered into, within 7 days from its conclusion.

In summary, the new regulation does not seem to bring any serious consequences, except for the additional reporting obligation imposed on remitters and natural persons. It should be noted, however, that pursuant to article 68 of the Act on the Social Insurance System, the Polish Social Security Administration is authorized to inspect whether the parties should be subject to insurance, as well as to challenge the contracts concluded by the parties. In fact, during ZUS inspections, contracts for specific task concluded by the parties may be reclassified as, for example, contracts of mandate, which, in turn, are covered by compulsory pension and disability insurance. At present, under Article 9(2c) on the Act on the Social Insurance System, a person who entered a contract of mandate for an amount higher or equal to the minimum wage (i.e. PLN 2,800 for 2021) is not subject to pension and disability insurance for other reasons. Pension and disability insurance contributions are due on the amount up to the minimum wage.

Additionally, it should be emphasized that pursuant to Article 66(1)(e) of the Act of 27 August 2004 on Publicly Funded Healthcare Services (Journal of Laws of 2020, item 1398), signing a contract of mandate results in compulsory health insurance coverage.

The Polish Civil Code defines specific task contract as a contract of result, where the contractor assumes an obligation to achieve an individually specified outcome defined by the object of the contract. In turn, the contract of mandate is described as agreement of best effort. Based on the information on the concluded contracts for specific task and other evidence obtained, ZUS has the right to inspect the said contracts. Subsequently, the contracts concluded by the parties may be challenged and reclassified as contracts of mandate.

As a result, ZUS may order the remitter to pay the entirety of the contributions due under the challenged contract, together with interest for late payment, and charge an additional fine. This means that the newly introduced obligation of reporting specific task contracts, despite having no direct impact on social security settlements, may significantly influence the remitter's obligations and the net amount of the party's remuneration.

In fact, according to the media, works are underway to amend the regulation limiting the social contribution assessment basis under mandate contracts, pursuant to which all revenue earned by the insured would be subject to compulsory pension and disability insurance, regardless of the concurrence of insurance titles, which is now governed by Article9(2c) of the Act on the Social Insurance System. ■

General rulings relating to PIT issued in 2019

2020 brought two major rulings in personal income tax-related matters, namely:

1. employee's flat-rate revenue from using a company car for private purposes (case file DD3.8201.1.2020); and

2. applying 50% tax-deductible costs to revenues from royalties (case file DD3.8201.1.2018).

The importance of the rulings stems from the fact that the issues to which they pertain have long been object of non-uniform approach of tax authorities.

This article present the primary statements of the two rulings which are of particular importance to PIT payers and remitters.

EMPLOYEE'S FLAT-RATE REVENUE FROM USING A COMPANY CAR FOR PRIVATE PURPOSES

The main challenge related to the flat-rate approach to employees' revenue from the use of a company car for private purposes lied in determining whether the flat-rate income within the meaning of the Polish PIT Act covered fringe benefits associated with the use of a company vehicle (such as fuel cards or servicing costs). In fact, an important number of individual rulings issued by the Head of the National Revenue Administration Information Center challenged inclusion of the fuel costs covered by the employer into the employee's flat-rate revenue.

This issue was eventually resolved by the Minister of Finance. In his general ruling, the Minister stated that the costs related to maintenance and general use of a vehicle, borne by the employer who makes the vehicle available to the employee for their private use, shall be classified as flat-rate income referred to in Article 12(2a) of the PIT Act.

The Minister of Finance pointed out that the goal of regulating the issue of car fringe benefits through the PIT Act was to facilitate the method of calculating the amount of the related revenue.

Interpretation of the provisions which would give rise to the need of further calculation of the amount of revenue from the fuel used for private purposes etc. would be contrary to the intention of the legislator, who sought to simplify the revenue calculation method. The Minister of Finance supported the uniform stance displayed by administrative courts in their judgments, according to which the flat-rate value of the car fringe benefit covers

the employer's costs related to the maintenance and general use of the vehicle, such as: fuel, insurance, tire replacement, current repairs or periodic inspections, which the employer, as the vehicle's owner, must incur to ensure that the car is operational and authorized to participate in road traffic.

It should be emphasized, however, that under the general ruling some additional charges, such as parking fees or highway tolls shall not be treated as benefit-derived amounts covered by the flat-rate revenue. In fact, the Minister of Finance stressed that the Act refers solely to benefits relating to the use of a company vehicle, which in principle do not cover any derivative costs of travel by car.

APPLYING 50% TAX-DEDUCTIBLE COSTS TO REVENUES FROM ROYALTIES

The second ruling provides conditions which shall be met in order to apply 50% tax-deductible costs to revenue earned on account of exercising and disposing of copyright or related rights under an employment contract or other civil law contract.

In principle, the ruling is in favor of taxpayers, as the presented principles seem to be aimed at facilitating the use of the solution.

Pursuant to the general ruling issued by the Minister of Finance, in order to qualify the remuneration as royalty subject to 50% tax-deductible costs, the following conditions must be met:

— creation of a work being the subject of copyright, conditioning the use of copyright by the author and enabling the disposal of proprietary copyright to the work;

— providing objective evidence that a work protected by copyright was created;

— making clear distinction between the royalty and other components of the remuneration, except for a situation where 50% tax-deductible costs can be applied to the entire remuneration of the author.

Furthermore, it must be noted that the Minister's ruling does not provide for the principles of determining the amount of the royalty due, as it remains within the contractual freedom of the parties.

Additionally, pursuant to the ruling, the royalty for a given work may be paid out before the work is created (e.g. in the course of its creation).

The ruling sorted out some controversies that have arisen over the years. Importantly, it was stated that:

— in order to apply 50% tax-deductible costs, copyrights must be transferred to the employer (it often happens that in the employee-employer relationship the copyright is automatically vested in the employer, hence, the issue of copyright must be properly regulated by contract in advance);

— it is not sufficient to provide a joint declaration of the employer (or a different entity) and the employee (a party to a civil law contract) stating that creative activity has been performed, unless it specifies the kind of work created or being under creation (i.e. it is necessary to link the royalty with the act of work creation);

— it is insufficient to specify in the employment contract the percentage of time dedicated to creative activity or to establish it on the basis of the work time records, because such a distinction does not indicate whether any work was actually created or was under creation (i.e. also in this case it is necessary to link the royalty with the act of work creation);.

— **the parties to the contract may adopt any rules for determining the royalty. The contract may explicitly indicate the amount of the royalty due or provide for the principle of determining the royalty as a percentage of the total amount of remuneration, however, the royalty must remain in connection with a specific work (or works defined by type). Therefore, determination of the author's fee may also rely on the time spent by an employee-author on creation (or the process of creation) of a work (e.g. via timesheets), along with relevant documentation containing records of particular works.**

The activities of the Minister of Finance should be assessed positively. The general rulings presented herein are to provide for unification of the tax authorities' approach and increase the trust put in them by the public. It should be kept in mind, however, that there are still many points of dispute related to PIT that should also be dealt with by way of general rulings. We all hope that this form of dispelling the doubts of remitters, taxpayers and tax experts will be increasingly used by the Minister of Finance. ■

New rules of lump-sum taxation of recorded revenue and fixed amount taxation

Because of their scope, new rules of lump-sum taxation of recorded revenue, applicable as of 2021, seem truly revolutionary. Some amendments were introduced to fixed amount taxation rules. What are they and who they apply to?

The amendments importantly extended the group of taxpayers eligible for application of the lump-sum tax of recorded revenue. First of all, the revenue cap has been increased eight times. This means, that lump-sum taxation of recorded revenue can now be applied by taxpayers with annual revenue over EUR 250k, as long as they do not exceed the cap of PLN 2m, applicable as of 2021. Secondly, the new rules provide for abolition of most of the exemptions from lump-sum taxation, in particular those listed in Annex 2 to the Act, which has been repealed. Annex 2 to the Act provided a list of services, the rendering of which precluded the possibility of applying lump-sum taxation, hence, its repeal made it possible to lump-tax services related to buying and selling real estate for own account (which is now taxed at a rate of 10%) or services related to sports, entertainment and recreation (which are now taxed at a rate of 15%).

Importantly, the amendments were also made to the list of liberal professions, extending its scope with legal professions, but also including other occupations, such as psychologist, translator or accountant. Moreover, as of 2021, the list also includes activities performed for legal persons and organizational units without legal personality, or for natural persons for the purposes of non-agricultural business activities conducted by them. Up to now, liberal professionals rendering services to such entities were not entitled to use lump-sum taxation.

In order to make lump-sum taxation more appealing to taxpayers, some rates were decreased and the revenue limit entitling for quarterly flat-rate payments increased eight-fold. The decreased rates may be applied by taxpayers performing liberal professions (17% instead of 20%) and taxpayers rendering services in such areas as photography or parking lot management (15%

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instead of 17%). Furthermore, the amendments lowered the amount of lump-sum tax on services related to accommodation: the rate of 17% applied until the end of 2020, and in 2021 it was unified with the rate provided for lump-sum taxation on rent, i.e. 8.5% and 12.5% on the excess of revenues over PLN 100K.

From 2021, lump-sum taxation can be applied by taxpayers renting real estate as part of business activity. Up to now, the solution was available solely to taxpayers earning revenue from private tenancy. It should be emphasized, however, that a clear distinction between these sources of income still has not been made, which often led to problems with their proper classification. In practice, renting out more real estate is treated as renting real estate as part of business activity. It seems, however, that now, when both private tenancy and renting real estate as part of business activity are to be covered by a uniform lump-sum taxation, the practical significance of source of revenue qualification is likely to diminish. Up to now, re-qualifying private tenancy covered by lump-sum taxation on recorded revenue as renting real estate as part of business activity led to applying a progressive rate from 17% to 32%, instead of the fixed rates of 8.5% and 12.5%.

From 1 January 2021, the taxpayer subject to fixed amount tax may, in the period from 2021 to 2024, increase the number of employers by three without losing eligibility for this type of taxation. Furthermore, exemption from fixed amount tax in a situation where the taxpayer's spouse conducts the same business activity was partially waived: starting from 2021, this solution became unavailable only if the spouse pays income tax on general terms or is subject to lump-sum taxation. Therefore, it is permissible to apply the fixed amount tax solution if both spouses conduct business activity in the same scope and both decide to apply it. Additionally, 2021 brough an increase in fixed amount tax rates, pursuant to the Notice of the Minister of Finance, Development Funds and Regional Policy of 5 November 2020 (Polish Official Gazette "Monitor Polski" of 2020, item 1083).

The amendments introduced to lump-sum taxation of recorded revenue seem beneficial, however, it should be borne in mind that the profitability of choosing this form of taxation depends on the individual conditions under which the taxpayer operates. On the one hand, when choosing this form of taxation, taxpayers do not have the right to reduce the tax base by deductible costs, which means that the lump-sum taxation is usually the most profitable for taxpayers with low expenses. On the other hand, the lump-sum taxation of recorded revenue may seem appealing due to low taxation rates, in particular for some industries, e.g. construction work-related activities, taxed at a rate of 5.5%. Another advantage of lump-sum taxation is that it allows for the use of single-entry bookkeeping system, which poses an advantage to those taxpayers guided by the desire to simplify their tax settlements, and not by economic calculation.

Thus, having considered all factors, lump-sum taxation of recorded revenue may turn out to be beneficial to some taxpayers, yet, primarily to those not involved with liberal professions. Despite many amendments to the lump-sum application scheme, it is unlikely to become an appealing form of taxation to liberal professionals. In a situation where the lump-sum rate is at 17%, it seems more advantageous to choose a 19% flat tax settled on income, and not on revenue.

The amendments introduced to fixed amount taxation are not of similar magnitude. Nevertheless, both the possibility of reducing hiring-related difficulties for companies facing the expected deterioration of the market situation, and the possibility of fixed amount taxation for spouses operating in the same business should be assessed positively. Although the increase in the fixed amount tax rates is not significant, it should be remembered that this method of taxation is most often used by small entrepreneurs who now struggle with economic turmoil induced by the COVID-19 pandemic. ■

Tax rates

PERSONAL INCOME TAX RATES IN 2021 (IN PLN)

Taxable base		Tax	
Over	Up to		
-	85 528	17%	minus tax free allowance
85 528	-	14 539.76 plus 32% of excess over 85 528.00	

TAX FREE ALLOWANCE (IN PLN)

Taxable base		Tax free allowance
Over	Up to	
	8 000	1360
8 000	13 000	1360 - [834,88 x (taxable base - 8000)/5000]
13 000	85 528	525.12
85 528	127 000	525,12 - [525,12 x (taxable base - 85 528)/ 41 472]
127 000		0

Approximate exchange rates (the beginning of 2021) are as follows:
1 EUR = PLN 4.5485; 1 USD = PLN 3.6998; 1 CHF = PLN 4.2055; 1 GBP = PLN 5.0589; 100 JPY = PLN 3.6011

SOCIAL SECURITY RATES

Contribution type	Employee share	Employer share	Total
Pension insurance *	9.76%	9.76%	19.52%
Disability insurance*	1.50%	6.50%	8.00%
Sickness insurance	2.45%	–	2.45%
Accident insurance	–	0.67%-3.33%	0.67%-3.33%
Guaranteed benefits fund	–	0.10%	0.10%
Additional retirement fund (only in certain cases)*	–	1.50%	1.50%
Labour fund	–	2.45%	2.45%
Total – up to limit	**13.71%**	**19.48%-22,14%**	**33.19%-35.85%**
Total – past limit	**2.45%**	**3.22%-5.88%**	**5.67%-8.33%**
Health insurance**	9.00%	–	9.00%

* Contributions to pension and disability are limited to an annual cap set at 30 times the national average monthly salaryestimated for a particular year (for 2021, the cap is set at PLN 157 770).

** The gross amount reduced by employee share of pension, disability and sickness insurance constitutes the assessment basis to calculate the obligatory health insurance contributions (9% of income), where 7.75% of that assessment basis may be deducted from the tax liability due.

*** It is assumed that Additional retirement fund is not payable.

Publications

Pracownik za granicą. Jak firmy w Polsce delegują pracowników?

Frontiers in tax

Roczne zeznania podatkowe Polaków PIT 2019

Polski system podatkowy wg uczestników X Kongresu Podatków i Rachunkowości KPMG

Zniesienie limitu składek ZUS z perspektywy firm działających w Polsce

Podatkowe Podsumowanie Tygodnia (podcast)

Check our publications related to **business resilience in the new reality** and see how KPMG experts can support your company in these challenging times. Questions? Contact us at: **mampytanie@kpmg.pl** to receive expert support in the given domain.

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