GMS Flash Alert

Global Compensation Edition

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Poland - New Measures Could Affect Employment Costs Tied to Highly Qualified Specialists

There have been several recent developments related to the personal income tax and social security regime in Poland, including amendments to:

- the Social Security Act that aim to rescind the social security contributions cap, and
- the Personal Income Tax ("PIT") Act that change the rules on the taxation of flat letting revenues and the tax treatment of authors of creative works.

In this newsletter we cover:

1. Rescinding of the social security (ZUS) contributions cap starting in 2019 (initially planned from 2018)[1];
2. One integrated social security contributions transfer[2];
3. Changes to the flat-rate tax for taxpayers letting out flats in Poland[3];
4. Changes in the application of the 50-percent statutory deduction from income for the transfer of copyrights[4];
5. Changes in the taxation of equity-based compensation and other incentive schemes in 2018[5].

WHY THIS MATTERS

- The new rules aim to help augment budget revenues by raising the costs of employment of highly qualified staff and changing the flat-rate tax for landlords letting out accommodation facilities.

- Artists might welcome an increase of the threshold to which the 50-percent statutory deduction from income for the transfer of copyrights applies. However, the amended regulation at the same time significantly narrows the group of employees who perform creative activities within their job duties, thus excluding many individuals from potentially applying the statutory deduction.

- The amendments regarding the social security law will affect employees subject to Polish social security contributions. Foreign employees, performing work in Poland, who possess a valid foreign A1 certificate granted by the social security institution of another country shall not be affected by the rescinding of the social security (ZUS) contributions cap.

- The amended regulations regarding the taxation of incentive programmes will apply to many equity-based and other incentive compensation schemes and result in substantial changes in the taxation of awards obtained by taxpayers under such programmes.

This new legislation will increase employment costs in Poland, in many cases, and the costs of assigning employees to Poland. This will also affect the amount of tax levied on behalf of employees creating copyright protected works.

Rescinding of the Social Security (ZUS) Contributions Cap from 2019

The amendments to the Social Security Act provide for the abolition of the upper limit for contributions to the pension fund and disability fund, above which contributions currently are not paid.

It is assumed that the so-called "thirty-fold limit" on the payment of pension fund and disability fund contributions will be abolished (in 2017 the limit is set at PLN 127,890 – once the year-to-date gross income, which is subject to social security, exceeds this amount, pension fund and disability fund contributions cease being paid).

The draft of the regulation changing the Social Security Act was adopted by the Senate, but the president of Poland decided to use his prerogative and referred the draft to the Constitutional Tribunal.

If the regulation enters into force, pension fund and disability fund contributions will be due on total income, in the same manner as the illness and accident insurance contributions. The rescinding of the contributions cap shall directly affect the amount of old-age pension received in the future, however.

KPMG NOTE

Adoption of the provisions in their proposed form will include, among others, an increase in labour (remuneration) costs incurred by employers, as pension fund and disability fund contributions will be paid throughout the year, regardless of the amount of the employees' remuneration. It should be noted that in the case of employees earning more than approximately PLN 10,000 (gross) per month, the new regulations will impact their net remuneration.

The draft regulations are currently awaiting the signature of the president and in accordance with the principle of *vacatio legis*, the amendment is likely to enter into force on 1 January 2019 (the initial draft included provisions whereby the entry into force was set to be already in 2018).

One Integrated Social Security Contributions Transfer

Current regulations impose an obligation on the payer to make three or four (depending on the circumstances) separate social security contribution payments to, respectively, three or four different accounts of the social security institution (one for each type of payment).

In the newly passed revision to the Social Security Act in Poland, each payer will be provided with an individual account, to which all social security contributions will be transferred. This provision of the amended Social Security Act will enter into force on 1 January 2018.

Flat-Rate Tax on Rental Income

According to the current rules, income from rents, leases, and contracts of a similar nature obtained by individuals outside of their registered business activity are taxed according to the general principles at progressive rates of 18 and 32 percent. Individuals, however, may elect to tax such income at a flat rate of 8.5 percent.

The enacted changes in the PIT Act limit the application of the current rate only to rental income not exceeding PLN 100,000 a year and introduce a higher rate of 12.5 percent on any excess.

Applying 50-Percent Tax Deductible Costs

Under the Polish income tax law, there is a special deduction for individuals performing work of a creative nature for the transfer of copyrights. It has been widely used in business until now, but the proposed changes will result in:

- an increase in the threshold for application of the statutory deduction from PLN 42,764 to PLN 85,528, thereby bringing more people into the tax net and increasing the amount of income in the year to which the deduction can be applied; and

- the introduction of a restriction on the types of activity to which a 50-percent deduction apply – starting from 2018, the 50-percent deduction may be applied to revenues from the following types of activities:

  1) architecture, interior architecture, urban planning, fine arts, music, photography, audio-visual works, computer programs, choreography, artistic soldering, folk arts, and journalism;

  2) research and development, science, faculty teaching;

  3) artistic works in the field of theatrical and stage arts, theatre and stage management, dance and circus arts, as well as in conducting, vocal, instrumental, costume, and scenography;

  4) audio-visual production of directors, screenwriters, image and sound operators, editors, stuntmen; and

  5) "opinion journalism."

Taxation of Equity-Based Compensation and Other Incentive Schemes in 2018

The amendments to the Personal Income Tax (PIT) Act introduced a number of significant changes regarding the taxation of income from incentive programmes based on, among others, shares and derivative financial instruments.

New regulations extend the exemption from taxation. They clarify the point in time at which one is deemed to receive income. Taxable income arises only at the time of sale of the shares, which is the moment one is deemed to receive income under a share-based incentive programme. Prior events occurring within the framework of the incentive programme (e.g., the acquisition of a derivative financial instrument, free-of-charge acquisition of shares, or their purchase at a preferential price) are not events that trigger taxation.

In order to apply the exemption, the condition must be met that such shares be acquired through incentive schemes. The definition of an incentive scheme and the concept of a parent company are defined in the PIT Act.

A significant change compared to current regulations is that the **exemption of the awards in the form of shares will be extended to shares of companies that are seated outside the European Union (EU)/European Economic Area (EEA).** The preferential treatment applies to taxpayers acquiring shares of companies whose registered office or management is located on the territory of countries with which Poland has concluded a double taxation treaty.

The exemption does not apply to derivatives instruments acquired free-of-charge – the amended regulations implement the general rule to qualify them as income from the source from which the derivative comes.

FOOTNOTES:

1 Act of 15 December 2017 amending the Act on the Social Security System and amending certain acts.

2 Amendments to the Polish Act of 13 October 1998 on Social Security System introduced by the Act of 11 May 2017 (Journal of Laws 2017, item 1027).

3 Amendments to the Polish Act of 26 July 1991 on Personal Income Tax introduced by the Act of 27 October 2017 (Journal of Laws from 2017, item 2175).

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5 Amendments to the Polish Act of 26 July 1991 on Personal Income Tax introduced by the Act of 27 October 2017 (Journal of Laws from 2017, item 2175).

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PLN 1 = EUR 0.241
PLN 1 = USD 0.299
PLN 1 = GBP 0.2116
PLN 1 = RUB 16.71

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