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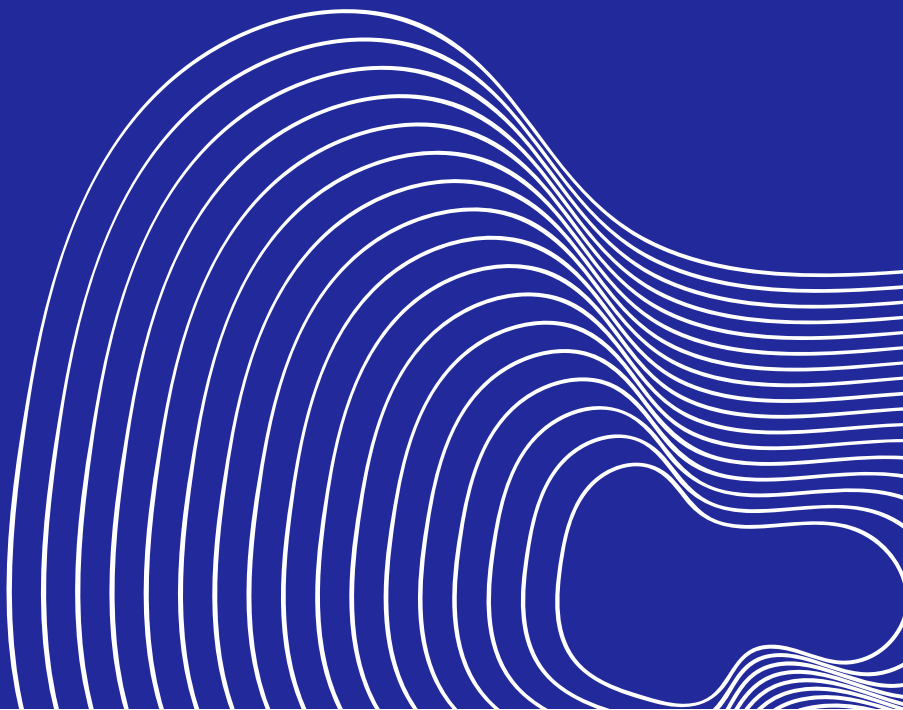
THE RIGHT FOCUS

APRIL 2023



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LATEST AMENDMENTS TO THE LABOUR CODE

ANNA GWIAZDA

On 4 April 2023, the Act of 9 March 2023 amending the Labour Code was published.

The changes will come into force after 21 days, i.e. on 26 April 2023.

Implementation of EU directives

The latest amendments to the Labour Code aim to implement the following EU directives into Polish law: the Work-Life Balance Directive[1] and the Transparent Working Conditions Directive[2].
The main aim of the new regulations is to ensure the transparency of working conditions and to improve living and working conditions.

Changes to probationary contracts

The length of a probationary period will not change and will continue to be a maximum of 3 months.

However, if an employer intends to conclude a fixed-term employment contract after a probationary period, the length of the probationary period shall be commensurate with the expected duration of the contract and shall not exceed the following periods:

- **1 month** – if the intention is to conclude a fixed-term employment contract for less than 6 months
- **2 months** – if the intention is to conclude a fixed-term employment contract for at least 6 months and less than 12 months

Therefore, when concluding a probationary contract, an employer shall specify the intended duration of a contract to be concluded after the probationary period and determine the duration of the period accordingly. Consequently, a probationary contract concluded for a period of up to 2 months shall indicate the period for which the parties intend to conclude a fixed-term employment contract, if they intend to conclude such a contract for a period of less than 12 months.

Another novelty is the possibility of extending a probationary period by a period of leave or other excused absence (e.g. illness).
In an employment contract, the parties may also agree to extend a probationary period once (for a maximum of one month) if justified by the nature of work. This is because, in some cases, more time may be needed to verify an employee's qualifications (which is the main purpose of a probationary period).

Renewal of a probationary contract with the same employee will only be allowed if the employee is to be employed for a different type of work. The amendments remove the possibility of renewing a probationary contract to perform the same type of work three years after the expiry or termination (Polish: rozwiązanie) of the previous contract.

The right to concurrent employment with another employer

Both the Polish Constitution and the Labour Code contain provisions on the principle of freedom of work (in particular, the right to work freely chosen in accordance with Article 10 of the Labour Code).

On the other hand, the amendments to the Labour Code introduce an explicit provision according to which an employer may not prohibit an employee from simultaneously remaining in an employment relationship with another employer or from simultaneously remaining in a legal relationship which is the basis for the provision of work other than an employment relationship.

This prohibition does not apply if a non-compete agreement is in place. An employer will only be able to require an employee to give up additional employment with another entity if that additional employment would violate the non-compete agreement.

Similarly, the mere fact of taking up employment with another employer may not be the basis for unfavourable treatment of an employee, and in particular may not constitute a reason justifying the termination, with or without notice (Polish: wypowiedzenie lub rozwiązanie bez wypowiedzenia), of an employment contract by an employer, the preparation of such termination or a reason for the application of any measure having equivalent effect to the termination (Polish: rozwiązanie) of an employment contract.

Extension of data in employment contracts

The list of minimum information to be included in an employment contract will change.

In particular, an employer shall provide its registered office address in the contract.

The provisions of a probationary employment contract must also be extended to include the following information:

- Its duration or end date
- The period for which the parties intend to conclude a fixed-term contract at the end of the probationary period, if This period is less than 12 months
- Information on the possibility of extending the probationary period, if justified by the nature of work (for a maximum of 1 month)
- Information on the possibility of extending the probationary period to cover periods of leave or other excused absence.

Extension of information on terms and conditions of employment

Employers' obligations to provide information on terms and conditions of employment to newly hired employees will be expanded.

No later than 7 days after an employee has been admitted to work (previously 7 days after an employment contract has been concluded), an employer shall provide the employee with the following information:

- The maximum daily and weekly working time
- The standard daily and weekly working time
- Breaks to which the employee is entitled
- Daily and weekly rest periods
- Overtime work and overtime pay rules
- In the case of shift work, the rules on changing from one shift to another
- In the case of multiple workplaces, the rules on movement between workplaces
- Components of the employee's remuneration and benefits in cash or in kind other than those agreed upon in the employment contract
- The amount of paid leave to which the employee is entitled, in particular annual leave, or, if this is not possible to determine at the date of providing the employee with the above information, the rules for its determination and granting
- The applicable rules on the termination of the employment relationship, including the formal requirements, the length of notice periods and the time limit for appealing to a labour court, or, if it is not possible to determine the length of notice periods at the date of providing the employee with the above information, the manner of determining such notice periods
- The employee's right to training, if provided by the employer, and in particular the general principles of the employer's training policy
- Collective labour agreement or other collective agreement to which the employee is subject and, in the case of a collective agreement concluded outside a workplace by joint bodies or institutions – the names of those bodies or institutions
- If the employer has not established work regulations – the date, place, time and frequency of payment of remuneration for work, night work and the method adopted by the employer for confirming the arrival and presence of employees at work and for justifying any absence from work

In addition, no later than **30 days from the date of an employee's admission to work**, an employer shall provide the employee with information on the name of the social security institution to which the social security contributions related to the employment relationship are paid (i.e. ZUS or the relevant foreign social security institution to which the contributions are paid) and information on the social security-related protection provided by the employer. The employer shall also inform employees about any Employee Capital Plans in operation.

Any change in an employer's registered office address shall be communicated by the employer to employees within **7 days of the change.**
A simplification for employers is the possibility of providing information to employees in electronic format (e.g. by email or on a disk).

The obligation to provide the extended information applies to new employees, i.e. those hired after the entry into force of the Act, i.e. after 26 April 2023. However, existing employees will be able to make a binding request to an employer to provide the extended information. The employer will then be obliged to provide the information within three months of the request.

Additional information shall also be provided to an employee prior to a business trip abroad for a period of more than 4 consecutive weeks (in particular the length of stay, the currency of remuneration, and the terms and conditions of return).

Additional information obligations of employers

As part of the implementation of the Working Conditions Transparency and Predictability Directive, the amendments to the Labour Code require employers to inform all employees, in the manner customary to the employer, of the following:

- Promotion opportunities and
- Vacancies

Requests of employees for a change in the form of a contract, and for more predictable and secure working conditions

An employee who has been employed by an employer for at least 6 months may, once per calendar year, request the employer:

- To convert their employment contract into a permanent contract or
- For more predictable and secure working conditions, including a change in the type of work or full-time employment

This does not apply to employees on probationary contracts.

The employer is not bound by any such request, but should take it into account as far as possible.
The employee's request should be considered by the employer, taking into account the needs of both the employer and the employee. The request should be answered within 1 month, stating the reasons for refusal if the request is not granted.

Both the employee's request and the employer's response may be made in writing or in electronic format (e.g. by email).

Additional breaks

As part of the implementation of solutions aimed at improving employment conditions, the rules on breaks at work will change. Under the current rules, if an employee's daily working time is at least 6 hours, the employee is entitled to a break of at least 15 minutes, which is included in the working time.

The amendments to the Labour Code provide for the introduction of additional breaks included in working time:

- A second break of at least 15 minutes if an employee's daily working time exceeds 9 hours
- A third break of at least 15 minutes if an employee's daily working time exceeds 16 hours

Additional work breaks are intended to help employees recover, therefore they cannot be accumulated and their use is the responsibility of employees.

Time off on grounds of force majeure

A new option is for employees to take time off from work for urgent family reasons on grounds of force majeure in the case of illness or accident if the employee's immediate attendance is indispensable.

The time off will include 2 days (or 16 hours) per calendar year, with the right to 50% of the salary calculated as the salary for annual leave.

The employee should submit the relevant request in writing or electronically (e.g., by e-mail) no later than the day the time off is taken.

Carer's leave

The amendment has introduced a new type of leave - **carer's leave of 5 days** per calendar year.

The employee will not retain **the right to pay** for the duration of the carer's leave, but this period will count as part of the period of employment on which the employee's entitlements depend.

Carer's leave is intended to enable workers to provide personal care or support to family members (son, daughter, mother, father, spouse) or persons living in the same household, who require care or support for serious medical reasons.

This leave can be taken either as a one-time leave or in parts, and will be granted upon the employee's request submitted in hard copy or electronically no less than 1 day prior to the commencement of the leave.

The request must include:

- Details of the person in need of care/support
- The reason for the employee's need to provide personal care or support (without providing any details of the health condition of the person to whom the employee is providing personal care)
- Degree of kinship
- Residential address, in the case of a person who is not a family member (to confirm that the non-family member resides in the same household with the employee)

Parental rights and overtime work

In accordance with the current wording of the Labour Code, an employee caring for a child up to the age of 4 may not be employed without their consent for overtime, night time, intermittent working hours, or posted outside the permanent place of work.

The amendment extends these rights to employees raising a child up to the age of 8.

Request for flexible working arrangements

An employee raising a child up to the age of 8 may apply for flexible working arrangements.

Flexible working arrangements mean: remote working, intermittent working schedules, short working week scheme, weekend working scheme, flexitime, individual working time schedule, and reduced working hours.

The employer is not bound by the employee's request, but should consider it taking into account both the needs of the employee and its own needs, including the need to ensure the normal course of work, the organisation of work or the type of work performed by the employee.

Employees should be informed of the results of their application within 7 days of the filing of the request, with the employer informing the employee of either the granting of the request or the grounds for refusal.

Parental leave: increase and introduction of a non-transferable period of parental leave

The amendment to the Labour Code extends parental leave:

- To 41 weeks for the birth of one child (instead of the previous 32 weeks)
- To 43 weeks for a multiple birth (instead of the previous 34 weeks)

Parents of a child with a certificate stating a severe and irreversible disability or an incurable life-threatening illness, that arose during the prenatal period of the child's development or during childbirth, will be entitled to parental leave to care for that child of up to:

- 65 weeks - for the birth of one child
- 67 weeks - for multiple births

A rule has also been introduced whereby each employee-parent will have an exclusive right to 9 weeks of parental leave out of the above-mentioned leave entitlement. This right may not be transferred to the other parent of the child – this portion of the leave will be non-transferable.

Parental leave will be granted either in a single period or in parts (but not more than 5 parts), no later than the end of the calendar year in which the child turns 6 years old.

Reduced period for taking paternity leave

The length of paternity leave remains unchanged and it will continue to be 2 weeks. However, the period during which an employee can take paternity leave will be reduced, i.e.:

- Until the child is 12 months old (previously 24 months old), or
- Until the lapse of 12 months (previously 24 months) from the date on which the decision on adoption of the child becomes final and no longer than until the child is 14 years old

New rules on the termination of fixed-term contracts

Until now, employers were not obliged to give reasons for the termination of a fixed-term contract.

There was also no obligation for trade union consultation, and no possibility to apply for reinstatement. Consequently, the protection of the employee's rights in this type of contract was weaker.

Accordingly, the European Commission argued that there was unjustified unequal treatment in terms of the conditions of termination of contracts of employment for fixed-term employees compared to permanent employees.

The amendment has introduced a fundamental change in this respect. Employers will now be obliged to:

- Provide grounds for the termination of fixed-term contracts
- Carry out trade union consultations also for the intended termination of a fixed-term contract.

If the court determines that the giving of notice of termination or the termination of a fixed-term employment contract is unjustified or unlawful, the court will be able to reinstate the employee (or award damages if the period until the expiry of the fixed-term contract is too short).

Protection against less favourable treatment in employment due to the exercise of employee rights

The exercise by an employee of their rights in respect of breaches of labour law, including the principle of equal treatment in employment, may not be the basis for any unfavourable treatment of that employee. In particular, it may not be a reason justifying termination of employment with or without notice by the employer.

Employees who have asserted their rights and have as a consequence suffered unjust treatment as given above are entitled to compensation of not less than the minimum salary.

The following may not be a reason justifying termination of the contract of employment with or without notice by the employer, justifying the preparation for termination of the contract of employment with or without notice, or for taking action which has an effect equivalent to termination of the contract of employment:

- A request by the employee for a change in the form of the contract of employment and more predictable and secure working conditions
- Additional employment (on the basis of a contract of employment or a civil law contract with another employer), unless there are restrictions in this respect resulting from separate regulations or the additional employment violates the employee's non-compete obligation
- The employee's request for additional information on the terms and conditions of employment
- The exercise of the right to reimbursement of the cost of training and the inclusion of training time in working time

In the event of a dispute, a reverse burden of proof will apply, meaning that it will be the employer who will have to prove that they were not motivated by the above-mentioned reasons when terminating the contract of employment.

If an employee believes that their probationary contract of employment was terminated for the above-mentioned reasons, they may, within 7 days of the employer's notice of termination, submit a request for stating the reason justifying the termination. The employer must respond within 7 days of receiving such request.

Extended protection for parent employees

The protection of employees-parents will be strengthened.

During:

- Pregnancy and maternity leave

and from the date of the employee's request for:

- Maternity leave or part thereof
- Leave on maternity leave terms or part thereof
- Paternity leave or part thereof
- Parental leave or part thereof

– until the end of that leave, employers may not:

- Make preparations to terminate employment with that employee with or without notice
- Terminate employment with that employee with or
- without notice, unless there are reasons justifying termination without notice through the fault of the employee and the company trade union organisation representing the employee has agreed to the termination.

This protection takes effect at:

- 14 days before the start of maternity leave or part thereof on the terms of maternity leave
- 21 days before the start of parental leave or part thereof
- 7 days before the start of paternity leave or part thereof

[1] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.07.2019, p. 79)
[1] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.07.2019, p. 105)

EARN-OUT
A WIN-WIN

PAWEŁ MARDAS

The valuation of a company is the cornerstone of any M&A transaction. Naturally, sellers want to achieve the highest possible price, while buyers do not want to overpay. However, the dynamics of transaction processes and their complexity may lead to changes in the parties' expectations as to the price agreed in the early stages of negotiations.

Similarly, the financial overview of the company being sold often varies significantly at different stages of the transaction process and noticeably so immediately after closing. It is therefore useful to be familiar with the methods and tools that can be used to manage the purchase price of a company. One such tool is the earn-out mechanism.

Earn-out: how to align the expectations of both parties

The earn-out is a commonly used mechanism among the many ways to adjust the price in the event that more time elapses than anticipated between the signing of the contract and the closing of the transaction.

The earn-out mechanism provides the seller with the opportunity to receive a post-closing price premium if the company being sold meets certain parameters or financial goals.
Such parameters may vary and may involve, for example, a certain level of revenue or income, meaning that not only the revenue but also the cost of generating that revenue, may be relevant in determining whether an earn-out is due.

One of the most commonly used measures of a company's earnings growth in earn-out clauses is EBITDA.

However, the reason for the earn-out payment may also be non-financial, such as the company obtaining a patent within a certain period after the closing of the transaction.

The earn-out mechanism is a solution that reconciles the parties' conflicting sale price expectations. The seller knows that they should get more for the company being sold because of its high growth potential, which will often be confirmed by post-closing results.

The buyer, on the other hand, is aware that the price expected by the seller will not be paid immediately, and that a certain part of it will be deferred and will depend on the prior achievement of the forecast results.

Earn-out in M&A transactions

For the above reasons, the earn-out mechanism is a commonly used solution in M&A transactions and so is worth a closer look.

At first glance, the issue seems simple, but it can be more complex than it seems.
Securing the earn-out payment depends not only on the efforts made to achieve certain results, but also on the transaction documentation containing a well-drafted earn-out clause.

To illustrate this with a concrete example, consider a transaction in which the seller has been given the option to increase the price in an earn-out formula if the company achieves a certain level of EBITDA within the next six months after the closing of the transaction.

From the seller's perspective, one of the first questions that will arise is how to ensure sufficient control over the company during this period to have a real impact on the ability to deliver the results on which the earn-out payment depends.

It is easy to imagine a situation where the buyer, as the new owner, is not interested in a price premium and deliberately sets operating costs or other parameters that affect the seller's expected results, thereby making it difficult for the seller to secure the earn-out payment.

This justifies the need for the seller to be able to impact the cost policy of the divested company, or other relevant parameters, for a period of time relevant to determining whether an earn-out is due.

From the buyer's perspective, the inclusion of an earn-out clause also requires special attention and consideration of possible consequences. The buyer will be interested in ensuring that the measure of the company's performance, on which the earn-out payment is based, is clear enough to link the possibility of a price premium to the actual results achieved that are relevant from the buyer's perspective.

The seller should also expect a clear and objective earn-out formula and have an equal interest in avoiding disputes in this respect.

Earn-out: the art of balancing needs and expectations

The drafting of an earn-out clause is a matter of balancing the expectations of both parties to the transaction. The need for the seller to retain some control over the ability to achieve the results on which the earn-out is based must not unduly interfere with the discretion of the buyer, as the new owner of the company, as to how the company should be operated and managed.

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PLEDGE AS SECURITY FOR FINANCING

DOMINIK KARKOSZKA

ADAM CZARNOTA

In the current economic situation and with inflation constantly on the rise, companies are increasingly looking for external financing to maintain their business at its current level or to ensure continued growth.

Clearly, finance providers have quite far-reaching requirements for securing return of their funds.

In practice, one of the most commonly used types of security is a registered pledge over the shares or assets of the borrower.

Registered pledges – advantages and benefits

A registered pledge is a limited right in rem and a basic security on movables and transferable property rights.

Under this pledge, the encumbered thing generally remains in the possession of the pledgor, and the creditor may enforce their claims regardless of who owns the thing, with priority over personal creditors of the owner (although there are certain exceptions in this respect).

A registered pledge owes its name to the fact that it is established via an entry in the register (which distinguishes it from other pledges existing under Polish law). This entry is decisive for the establishment of the pledge right and renders the right effective towards third parties – so, in general, no one can claim ignorance of an entry in the pledge register.

Clearly, this security is so popular because of its advantages. And this is true both from the perspective of the borrower and the finance provider. Benefits include:

- Simple straightforward establishment procedure – it is enough to execute a pledge agreement (which must be in writing to be valid) and register the pledge using an official form
- Low cost of establishing a registered pledge (the registration fee is only PLN 200)
- Public availability of information (the pledge register is kept by district courts, which provide information on the establishment of a registered pledge on the assets of a given entity)
- Possibility for the finance provider to secure interest, incidental dues and costs

Pledge agreement – practical aspects

When negotiating and entering into a registered pledge agreement, the legislator has left certain aspects of the agreement open for modification.

As such, it is important to ensure that your needs and your preferred relationship with the other party are tailored into the agreement, in matters such as:

- Provisions introduced whereby the pledged item may, under certain conditions, become the property of the pledgee
- Restrictions imposed on the disposal and further encumbrance of the pledged item
- The pledgee being satisfied through a public tender in which the pledged item is sold
- In certain cases the pledgee may be granted voting rights at the shareholders' meeting in the case of a pledge on shares
- The pledgee being satisfied from the income of the company

Summary

A registered pledge is clearly one of the best ways to secure claims. However, it is important to remember that it is essential to tailor the wording of the registered pledge agreement to your needs, as this will significantly affect your entitlements, both in respect of the pledged property and of the other party.

THE IDEAS POWERED FOR BUSINESS SME FUND

TOMASZ SZAMBELAN

We have written many times about why protecting intellectual property and trademarks is now a must. And this is true in the context of both new technologies and conventional industries.

However, small and medium-sized enterprises do not always have sufficient funds to protect their rights. This is why EU institutions offer their support, including through the SME Fund grant scheme designed to help SMEs protect their intellectual property rights.

The SME Fund is a project supported by the European Commission and the European Union Intellectual Property Office (EUIPO). Applications can be submitted continuously until 8 December 2023. However, it's best to hurry, as funds are limited and applications will be decided on a first come, first served basis.

The Ideas Powered for Business SME FUND – funding of up to EUR 1,000

The programme issues vouchers that can be used to partly cover the fees for selected activities.

Any SME wishing to file a trademark or design application can claim up to EUR 1,000 for:

- Fees charged by intellectual property offices (including the Polish Patent Office and the EUIPO) such as trademark and/or design application fees, additional class fees, and examination, registration, publication and deferment of publication fees at EU and national level, (reimbursement of up to 75%).

- Fees charged by the World Intellectual Property Organisation (WIPO) such as trademark and/or design basic application fees, designation fees, and subsequent designation fees outside the EU. Designation fees for EU countries are excluded, as are handling fees charged by the office of origin (reimbursement of up to 50%).

Who exactly can benefit from the SME FUND

The SME Fund offers financial support to SMEs based in the European Union. In Poland, these include:

- Sole traders
- Commercial law companies and partnerships such as general partnerships, professional partnerships, limited partnerships, limited joint-stock partnerships, limited liability companies, joint-stock companies, simple joint-stock companies

These entities must meet the conditions for being a small or medium-sized enterprise, i.e. have a staff of up to 250 employees and an annual turnover of up to EUR 50 million or a balance sheet total of up to EUR 43 million.

The procedure for obtaining and redeeming the grant is transparent and the application must be accompanied by:

- ·The company's bank statement
- VAT certificate or NIP (tax ID number) certificate
- Declaration on honour – if the application is filed by a representative

SMEs – key information

Grants are awarded on a first come, first served basis. Funding may not be applied for services for which national or EU support has previously been obtained.

When should applications be submitted?

Applications can be submitted from 23 January 2023 until 8 December 2023. Grants are available throughout the year until all funds have been allocated.

According to data published by the EUIPO Observatory, revenue per employee is 68% higher for SMEs that do own IPRs such as patents, designs or trademarks, than for those that do not.

It is therefore worth taking the opportunity to protect IP rights, which brings tangible results for businesses.

INFLUENCERS - BE CAREFUL WHO YOU PROMOTE ON INSTAGRAM!
THERE ARE HEAVY FINES FOR PROMOTING ALCOHOL ON SOCIAL MEDIA

MATEUSZ OSTROWSKI

BARTŁOMIEJ GALOS

The turn of 2022 was the time when the promotion of alcoholic beverages on social media began to attract huge public interest. High-proof spirits are particularly emotive.

These cannot be advertised or promoted according to the Act on Education in Sobriety and Alcoholism Prevention. However, despite the ban, the Internet is flooded with content featuring spirit names, trademarks and graphic images.

How influencers 'get around' bans

Interestingly, alcohol is not the main theme in most related posts, and internet users are often confronted with content that cannot be clearly classified as advertising or promotion. In fact, in the public space, creators often

state that they are not encouraging anyone to drink alcohol and completely deny that the content they create can be considered as advertising or promotion.

On the contrary, they are keen to explain their activities as 'spreading the word', e.g. about non-obvious uses of alcohol in the kitchen, or telling other related stories. Alcohol also appears in random locations, often without proper labelling of the advertising collaboration, which deviates from the UOKiK guidelines and violates the same Act.

Influencers flooding us with alcohol advertisements face stiff sanctions in Poland

Under the current legal regime, such actions can expose influencers to serious consequences, of which having to remove a post or terminate cooperation with a particular client is just a drop in the ocean.

In France, for example, Instagram was 'only' forced to remove the content of influencers promoting alcoholic beverages, and the ruling obliged the site's owner, Meta, to provide the Addictions France Association with data containing the real identities of the influencers (full names, dates and places of birth and telephone numbers).

What's more, sanctions can be targeted directly – i.e. not at a site owner or specific alcohol producer, but at the influencers themselves, or simply at individuals whose social media activity is considered 'promotion' or 'advertising'.

A fine of PLN 10,000 to PLN 500,000 may be imposed on anyone who, in breach of the ban on advertising set out in Article 131 of the Act on Education for Sobriety and Alcoholism Prevention, advertises or promotes alcoholic beverages or provides information about the sponsorship of a mass event, subject to Article 131(5) and (6).

Fines of up to half a million for breaking the alcohol advertising ban

Despite the fact that the legislation came into force at the end of 1997, it is still difficult to find case law imposing heavy fines on promoters.

However, technological change has breathed new life into this legislation.
A well-known social activist filed a lawsuit on this basis with the District Public Prosecutor's Office in Warsaw-Śródmieście, which resulted in the public prosecutor filing criminal charges against three people who maintain public profiles with significant reach on social media.

The issue is therefore becoming topical and the situation shows that those who share their content on social media have a responsibility they may not have previously been aware of.

SLIM VAT 3.0

WOJCIECH ŚLIŻ

JERZY CYRAN

On 8 March this year, the first reading was held of the bill amending the Value Added Tax Act and certain other acts – i.e. the so-called SLIM VAT 3 (print no. 3025).

The bill is expected to enter into force on 1 April 2023, except for the changes to the VAT sanctions, which will enter into force on the day following the date of publication.

Below is a list of major tax solutions provided for in the bill.

Increase in the sales limit for small taxable persons to EUR 2,000,000

- The annual turnover limit for those with small taxpayer status will change from EUR 1,200,000 to EUR 2,000,000 (including tax)
- In practice, a larger group of taxable persons will be eligible for the cash method and quarterly VAT settlements

Clarification of the rules for applying the exchange rate for correction invoices when the original invoice is issued in a foreign currency

- A general rule will be introduced for the conversion of a foreign currency for both "in plus" and "in minus" adjustments, according to which the amount of the adjustment to the taxable base will be converted at the rate of the foreign currency in question applicable before the change
- Where a discount or rebate is applied to a correction invoice relating to supply of goods or services with a taxable amount expressed in a foreign currency, taxable persons will be allowed to make the conversion using one of the following methods:
  - the average exchange rate of the currency in question, published by the National Bank of Poland on the last working day preceding the date of issue of the correction invoice
  - the exchange rate published by the European Central Bank on the last day preceding the date of issue of the correction invoice; currencies other than EUR shall be converted at the rate applicable to EUR
- This solution is intended to clarify the previous rule for the conversion of foreign currency exchange rates in correction invoices

Designation of a single authority competent to issue binding rate information (WIS), binding excise information (WIA), binding tariff information (WIT) and binding origin information (WIP), and abolition of the fee

- The authority competent to issue and amend WIS, WIA, WIT and WIP at first instance and to hear appeals at second instance will be the Director of the National Tax Information Office
- The list of persons entitled to apply for WIS will be extended to include public entities under public-private partnership agreements and contracting entities under construction work or service concession agreements
- A WIS application form will be developed to standardise WIS applications and streamline their processing
- The WIS application fee will be abolished
- The WIS issuing authority will be able to request, where necessary, documents relating to goods or services constituting a taxable activity. Failure to provide the requested documents in due time will result in the application not being processed, with the possibility of an appeal. There will also be a similar sanction for failure to provide samples of the goods or to pay an advance for required tests or analyses when requested by the authority
- In practice, the WIS, WIA, WIT and WIP issuing process will be standardised and streamlined at national level

Abolition of the formal requirement to hold an invoice documenting intra-Community acquisition of goods (WNT) when deducting input VAT thereon

- The holding of an invoice will no longer be a formal condition for the deduction of input VAT
- Input and output VAT on WNT will always be accounted for in exactly the same accounting period, with the result that VAT on WNT will be completely neutral for taxable persons
- In practice, the change will remove the need for taxpayers to monitor whether the 3-month time limit for receiving an invoice has been exceeded

Liberalisation of the conditions for faster VAT refunds for non-cash taxable persons and strengthening the procedural framework for such refunds

The following reductions will be introduced:

- the period examined will be reduced from 12 to 6 months when determining compliance with the condition of:
  - the achievement by taxable persons of the total value of sales, including tax, recorded using online or virtual cash registers, for each accounting period and
  - keeping records of sales using only cash registers enabling connection and data transfer between the cash register and the Central Repository of Cash Registers (online or virtual cash registers)
- the threshold for the total value of sales will be reduced from PLN 50,000 to PLN 40,000, including tax, recorded using online or virtual cash registers, for each accounting period

In addition, for a period of two years from the entry into force of the amended legislation, taxable persons will be able to use preferential VAT refund conditions, provided that:

- the percentage of the total value of sales, including tax, recorded with the use of cash registers (online or virtual), in a given accounting period in relation to the total value of sales, including tax, made by taxable persons in a given accounting period, was no lower than 70% (following two years, the percentage will increase to the required 80%)

- the percentage of received payments made using payment instruments, including the use of a credit transfer service, in respect of sales including tax, recorded using cash registers (online or virtual), documented by receipts with a marking that the payment was made using a payment card, via a mobile payment service or a credit transfer service, consistent with the form of received payment, in relation to the total value of sales, including tax, recorded using such cash registers in a given accounting period, was no lower than 55% (following two years, the percentage will increase to the required 80%)

In practice, a larger group of taxable persons will be able to use preferential VAT refund conditions.

De-formalisation of the proportion procedures for calculating and deducting input tax

- The obligation to agree on the proportion forecast or the pre-WSS forecast in the form of a report will no longer apply to taxable persons starting a business for the purpose of calculating input tax and to taxable persons starting a business or achieving turnover in the previous tax year below PLN 30,000 for the purpose of deducting input tax
- Instead, taxable persons will be required to notify the head of the tax office of their estimated proportion
- In practice, the procedure for determining the preliminary proportion will become much less formalised

Increase in the amount enabling the proportion determined by taxable persons to be deemed to be 100%

- The amount of non-deductible input tax, enabling the proportion determined by taxable persons to be deemed to be 100%, in a situation where the proportion exceeded 98%, will be increased from PLN 500 to PLN 10,000
- As a consequence, the number of adjustments reported by taxpayers in their VAT returns will decrease

The possibility to opt out of an annual adjustment to deducted tax if the difference between the pre-determined proportion and the final proportion does not exceed 2 percentage points

- Taxable persons will be allowed to forego making the adjustment if the difference between the preliminary proportion and the final proportion does not exceed 2 percentage points, and the final proportion is lower than the preliminary proportion. In addition, non-deductible input tax resulting from the difference between both proportions and a multi-year (5- or 10-year) adjustment cannot exceed PLN 10,000
- In practice, there will be a significant simplification of settlements for taxable persons with minor differences between the preliminary and final proportions

A new, additional possibility for factors to release themselves from joint and several liability in the event of a change in a factor

- Factors will be given a new opportunity to release themselves from liability in the event of a change in a factor by transferring VAT amounts directly to a new factor's VAT account
- In practice, it will no longer be necessary for the supplier to be involved in the process

No obligation to print fiscal documents issued via cash registers

- Taxable persons keeping records of sales with the use of cash registers will no longer be obliged to print documents issued using such registers, i.e.: fiscal reports and non-fiscal documents
- This will only apply to online cash registers, including virtual ones
- Taxable persons will thus be allowed to choose whether they decide to keep fiscal reports and other non-fiscal documents in hard copy form or in electronic format only
- Although the introduced solution means that taxable persons will no longer be obliged to print such documents, these will continue to be issued in electronic format
- In practice, this will make it easier and more cost-effective to comply with record-keeping obligations

Changes to VAT sanctions

- The current VAT sanctions (the so-called additional tax liabilities) of 15%, 20% and 30% will become maximum values - this means that they may also be levied at a lower rate
- The amount of the sanction will be determined by the tax authority based on the nature and extent of a breach of duty leading to an irregularity, the circumstances, nature, extent, amount and frequency of that irregularity and the measures taken by taxable persons to remedy the situation
- A sanction of 100 % will be allowed to be imposed only on a taxable person who has deliberately and knowingly participated in a VAT fraud
- As a result, the sanctions imposed by the authority will be more lenient and there will be the possibility of waiving the sanction

Extension of the list of receivables that can be paid from the VAT account

- The extension covers tax on the extraction of certain minerals, retail sales tax, sugar tax, lump tax on the value of sold production, tonnage tax, miniature alcoholic beverage levy and related interest
- The VAT group will be changed to allow members of the group to transfer funds from their VAT accounts to the VAT account of the group representative
- In practice, the potential risk of a deterioration in the liquidity of taxable persons due to the limited availability of funds held in the VAT account will be mitigated

Previously proposed amendments to the bill

- The possibility to opt out of issuing an advance invoice and to issue a final invoice only has been moved to the bill introducing the National e-Invoicing System (KSeF)
- The proposal to extend the VAT exemption to include management services of special investment funds (SIFs) has been abandoned

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