kochański & partners Business Law Firm

THE RIGHT FOCUS

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CHANGES TO LABOUR LAW / NEW RULES FOR GRANTING WORK PERMITS FOR POSTED FOREIGN WORKERS

ANGELIKA STAŃKO

Higher fines for illegal employment of foreign nationals and new petty offences

In the June issue of The Right Focus, we wrote about the new rules for employing foreign nationals, which came into force on 1 June 2025.
These changes also affect foreign nationals posted to work in Poland by foreign employers, i.e. employers based outside of Poland.
Furthermore, fines for illegally employing foreigners are increasing, and fines for new petty offences are being introduced. In this article, we analyse what the other amendments contained in the act entail.

The circumstances where a work permit is issued for the purpose of posting

A work permit in connection with the posting of a foreign national is issued by the provincial governor (wojewoda)if:

- the foreigner was employed by the foreign entity prior to being posted to Poland

In practice, it will be necessary to present e.g. a letter of posting confirming employment prior to the date of posting.

- the posting is to a branch, establishment, or representative office of the foreign entity, or to an entity to which the foreign entity is the parent company or subsidiary

In other words, the foreign company and the host company in Poland must have vertical capital ties, i.e. one must directly or indirectly own shares in the other, or at least 50% of their management board members must be shared.

This change limits the number of companies to which foreign workers can be posted. From 1 June 2025, it will no longer be possible to post workers between 'sister' companies for intra-group postings.

- the posting is made for the purpose of providing an export service by a foreign entity
    - A service will be considered an export service if the foreign entity has a written agreement with a Polish company. This also means that the service is performed temporarily and occasionally by a foreign entity that does not conduct business activities in Poland.
- the posting is made for a purpose other than those listed above

The competence of the provincial governor issuing the permit

If the posting is made:

- to a branch, establishment or representative office of a foreign entity – the permit will be issued by the provincial governor competent for the registered office of the entity to which the foreigner is posted
- for the purpose of providing export services – the permit will be issued by the provincial governor competent for the registered office or place of permanent residence of the entity for the benefit of whom the services will be provided
- for other purposes – the permit will be issued by the provincial governor competent for the principal place of work.

How to submit an application, which documents to attach, and the fee amount

As administrative procedures for obtaining work permits are now fully electronic, applications for work permits to post employees to Poland must be submitted via the praca.gov.pl portal.

The foreign entity that employs the foreign national is a party to the procedure. This means that the employer must create an account on the praca.gov.pl website and provide their identification number (e.g. their number in the local register). Having a Polish NIP (tax ID number) or REGON (statistical number) is not necessary.

The list of required documents and the fee amount will be specified in a regulation issued by the Minister responsible for labour, which is still pending.

Until these new regulations are issued, the current fee and list of documents will remain in force.

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New obligation for foreign entities after obtaining a work permit

After obtaining a permit, the employing entity must submit a Polish copy of the employment contract to the provincial governor via the praca.gov.pl portal before allowing the foreign national to start work.

Fines for illegal employment and more

On 1 June, fines were also increased. Employing a foreign national illegally (i.e. without the appropriate documents legalising their stay and work in Poland) is now punishable by a fine ranging **from PLN 3,000 to PLN 50,000 for each instance of such employment (i.e. for each person employed illegally)**.

The employee will now also be subject to a fine. Anyone performing work illegally is subject to a fine of **at least PLN 100**.

A fine will also be imposed on employers for the following:

- failure to inform a foreign worker in writing of their right to join a trade union
- failure to provide the authority issuing the work permit/registering the statement on entrusting work with a copy of the contract on the basis of which the work was entrusted - a fine ranging from **PLN 1,000 to PLN 3,000**;
- failure to comply with the obligation to provide information to the authority granting the permit, including in the following areas: change of registered office, name or legal form of the entity entrusting work, transfer of the workplace, change of job title without a change in the scope of duties, failure of a foreign worker to take up employment - a fine of **not less than PLN 500**.

A DECADE OF SUSTAINABLE DEVELOPMENT

JOANNA BARBRICH

Ten years ago, the international community adopted the 2030 Agenda for Sustainable Development with 17 Sustainable Development Goals (SDGs). As a signatory, Poland committed itself to implementing measures in the areas of economy, society and the environment. A decade on, and it is a good time to summarise our achievements and the key ESG regulations that have shaped the legal landscape in Poland and throughout the European Union.

The significance of the 2030 Agenda

The 2030 Agenda is a global action plan that aims to eliminate poverty, protect the environment, and ensure universal prosperity. The document introduced an integrated approach to development, combining social, economic, and environmental aspects. For Poland, this meant adapting public policies and business strategies to address entirely new challenges.

Poland's progress in implementing the 2030 Agenda

Over the past ten years, we have achieved a great deal in terms of implementing the Sustainable Development Goals. One of our greatest successes has been in reducing poverty: extreme poverty rates have fallen, and social programmes such as family benefits and support for the elderly have improved the quality of life for many households.

There have also been positive changes in education. The availability of pre-school education has increased, and Polish students continue to perform well in international PISA studies. School digitisation programmes have also been introduced, which proved crucial during the pandemic.

The situation in the area of health has also improved slightly. Access to basic medical services has improved and life expectancy is gradually increasing. The efficiency of the healthcare system has improved thanks to the development of telemedicine and infrastructure investments.

There has also been an increase in the public awareness of environmental protection and responsible consumption. An increasing number of Poles are now sorting their waste, green products are growing in popularity, and companies are implementing ESG strategies in response to consumer and investor expectations.

However, despite these successes, we are still facing serious challenges.

One of the most difficult areas is the energy transition. The share of coal in the energy mix remains very high, and renewable energy sources need to be developed more quickly. The circular economy is still in its infancy, and our waste recycling rate is below the EU average. Further investment in energy efficiency, low-carbon transport and innovative technologies is required to reduce greenhouse gas emissions.

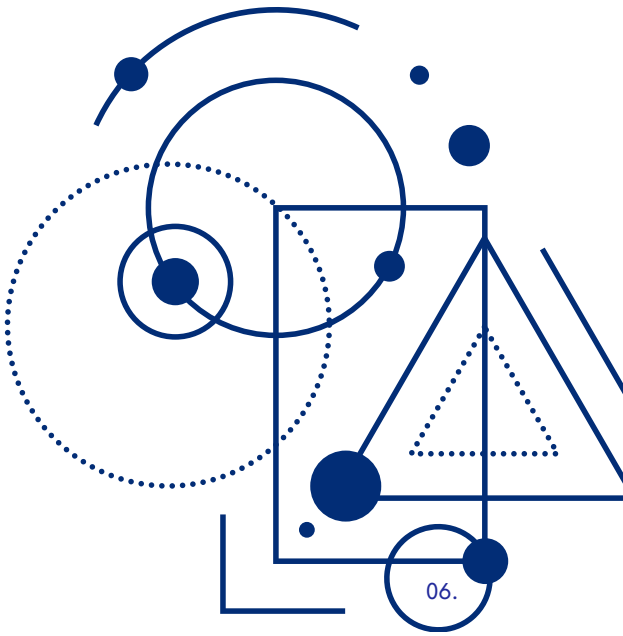
10 key ESG regulations

- The NFRD Directive (2014/95/EU) – transposed into Polish law in 2017, introduced non-financial reporting requirements for large public-interest entities
- The SFDR Regulation (EU 2019/2088) – imposed an obligation to disclose information on sustainable development in the financial services sector
- The European Green Deal (2019) – an EU strategy aimed at achieving climate neutrality by 2050
- The Fit for 55 package (2021) – a set of regulations designed to reduce EU greenhouse gas emissions by 55% by 2030
- The CSRD Directive (2022/2464) – extended ESG reporting obligations to all large companies and listed SMEs
- The European Sustainability Reporting Standards (ESRS) established uniform ESG reporting standards in the EU
- The CSDDD Directive – introduced the obligation for companies to conduct human rights and environmental due diligence across their supply chains
- The EUDR Regulation – prohibits the placing of products which are linked to deforestation on the EU market
- The Whistleblowing Directive ensures protection for individuals reporting breaches of the law, including those relating to ESG
- The Digital Services Act (DSA) introduced regulations on the responsibility of digital platforms, including transparency and the protection of user rights

Challenges for the future

The last five years of implementing the 2030 Agenda lie ahead for Poland and the European Union.

Key challenges include accelerating the energy transition, implementing the principles of the circular economy, and effectively incorporating new ESG regulations into business practice. Achieving these goals will require close cooperation between the public and private sectors, as well as civil society.



CLOUD MIGRATION AFTER THE DATA ACT / NEW RIGHTS, LOWER COSTS AND GREATER FREEDOM

ROBERT BRODZIK

The Data Act[i] introduces new rules for switching between providers of data processing services, including cloud services ('cloud switching').
The aim is to limit practices that prevent such switching ('vendor lock-in'), such as high exit fees and technical obstacles, and to ensure the interoperability of cloud services. Let's take a look at what cloud users should pay particular attention to.

You will not be charged for switching

The Data Act provides for the gradual abolition of fees associated with cloud switching.

Until 12 January 2027, 'cost-based fees', which are limited to the actual costs incurred by the provider in connection with the migration process, are still permissible.

After this date, such fees will be prohibited. This means, in particular, that it will be illegal to charge data egress costs and other fees related to the migration process.

At the time of entering into a contract, the cloud service provider must inform the user of all potential costs associated with the switching process during the transition period. This regulation aims to make migration conditions predictable, enabling companies to plan their strategies without the risk of unexpected financial burdens.

Interoperability and functional equivalence

The Data Act places emphasis on the technical possibility of switching and on ensuring the continuity of service functionality.

It defines functional equivalence as ensuring that the destination service provides the customer with at least the minimum level of functionality they experienced with the source service.

In practice, this means that, following a switch, the new cloud service should deliver a comparable outcome when carrying out the same functions and operations.
Equivalence obligations particularly apply to IaaS (Infrastructure as a Service) providers. They must "take all reasonable measures in their power" to ensure that customers achieve functional equivalence after switching providers.

In other words, the current provider should provide the necessary tools, documentation, technical support and capabilities for migrating data and the application environment.

Providers of other types of services, including PaaS and SaaS, are required to provide open interfaces (APIs) for communication and data migration at no additional cost. These interfaces must contain sufficient information about the structure and formats of the data to enable interoperability.

Impact on contracts and technology

The Data Act introduces a number of new requirements regarding the wording of cloud service contracts.

Such a contract should explicitly regulate the switching process and include provisions that enable the customer to:

- Transfer data and functionalities to a new provider or to their on-premises infrastructure 'without undue delay' and not after a 30-day migration period
- Terminate the contract after a maximum notice period of 2 months
- Have an exhaustive description of the data to be migrated and that which should be exempted in order to protect trade secrets
- Obtain a guarantee that the data will be retrievable for at least 30 days after migration
- Obtain a guarantee of the full erasure of their data by the service provider once the migration process is complete
- Receive a description of possible switching charges

In addition, the contract may stipulate that, once the notice period has expired, the customer will decide whether to switch to a different provider, port the data to an on-premises infrastructure, or erase it.

Before concluding the contract, the provider must also provide the customer with information on migration procedures and data structures and formats, including technical specifications and standards.

These procedures, along with information on jurisdiction and infrastructure security, should be available on the provider's website. Finally, the Data Act imposes a general obligation on all parties — the current and destination providers, as well as the customer — to cooperate in good faith to ensure a smooth switching process and continuity of service.

Data Act - exemptions and limitations

The legislature has provided exemptions from switching obligations, which generally apply to data processing service providers (including cloud service providers). These provisions do not require providers to develop new technologies or disclose protected information, particularly trade secrets or copyrighted content.

Furthermore, they do not apply to customised services, i.e. custom-built solutions for a single client that are not offered on a large scale, or trial versions/experimental services made available periodically. Before concluding a contract, providers should explicitly inform users if the service in question is subject to such exemptions

Summary

The Data Act requires a significant change in approach to cloud services. Companies should review their contracts and start planning updates immediately. It is crucial to introduce appropriate switching provisions and remove or renegotiate exit fees. Companies must also prepare their infrastructure, both technically and organisationally, for interoperability and migration in accordance with the new regulations.

[i] Regulation (EU) 2023/2854 of the European Parliament and of the Council

CONTRIBUTING ASSETS TO A FAMILY FOUNDATION / WHAT TO KEEP IN MIND

MIROSLAW MALCZESKI

First, an important reminder. A family foundation is a legal entity whose purpose is to manage wealth effectively and ensure its succession without the risk of dispersing assets accumulated over generations. Therefore, a key issue related to the activities of such an organisation is the contribution of this wealth to the foundation in the form of various types of assets that will work for the beneficiaries. Let's take a look at what this process involves in practice.

The process of transferring assets to a family foundation

The founder must contribute to the founding capital, providing a minimum of PLN 100,000. In practice, this capital is paid in cash.

It is worth remembering that a family foundation cannot return to the founder any of the assets contributed to the founding capital, either in whole or in part. Exceptions include situations where the founder is also a beneficiary, or when the foundation is liquidated, which, however, entails income tax obligations.

Therefore, contributing assets to a foundation requires careful consideration and attention to several factors.

How to make a contribution to a foundation

Various types of assets can be transferred to a family foundation. These are most often cash, movable property, real estate, shares in companies and securities.

Depending on the type of asset, additional requirements may apply. For example, a notarial deed may be required for the transfer of a title to real estate, or a document with a notarised signature for the transfer of shares in a company.

A common way to contribute to a foundation is through a donation agreement, which generally needs to be in the form of a notarial deed. However, an unnotarised donation agreement becomes valid if the promised benefit has been provided. If the donation is from matrimonial property, the consent of the spouse is also required.

Method of representation in family foundations

When transferring assets to a foundation and concluding an agreement, proper representation must also be ensured.

In accordance with the law, the family foundation is represented by the founder from the time the declaration of the foundation's establishment is made until the foundation has been entered in the register. After entry in the register, however, it is represented by the executive committee in accordance with the rules laid down in the articles of association.

You can find out more about the articles of association of family foundations >> here

Special rules of representation apply when assets are contributed to the foundation by a member of the executive committee. In such cases, the family foundation is represented by the supervisory board, and if no supervisory board has been established, by a representative elected by the beneficiaries' meeting.

Inheritance law and family foundation assets

It is also worth bearing in mind that contributing assets to a family foundation could have implications for subsequent inheritance. Specifically, the law stipulates that, in certain situations, the assets of the foundation may be included when calculating the forced share.

Taxes in family foundations

Finally, it is worth considering tax issues.

While making a donation is tax-neutral, this decision may not always be economically justified.

This may be particularly relevant for assets that are subject to high tax costs, where disposal outside the family foundation could be more advantageous from a fiscal point of view.

It is therefore always important to consider the founder's plans and intentions regarding the contributed funds, potential revenue, future investment plans and the timeframe for disposing of the contributed property.

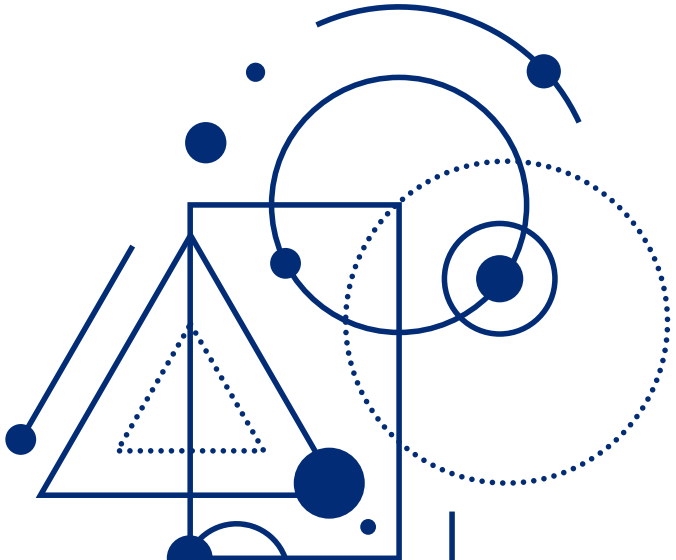
An in-kind contribution to a foundation may also affect the so-called property share, which is important for tax purposes relating to beneficiaries receiving benefits or in the event of the foundation's liquidation. The contribution of assets may alter the established share for beneficiaries and result in the taxation of future benefit payments as personal income.

Furthermore, in some cases, the transfer of assets may have VAT implications, which should also be examined and assessed in terms of the economic rationale of the entire transaction. Following such an analysis, it may be found that selling the asset in question is more advantageous than contributing it to the foundation.

Contributing assets to a family foundation: a summary

Contributing assets to a family foundation requires a carefully developed strategy and thorough assessment of important factors, both at the stage of its establishment and during its ongoing operation.

To effectively avoid 'tax traps' and the risk of making the wrong decisions, it is worth consulting experts who can answer your questions and support you in planning and executing the transaction.



KSEF AND TRANSFER PRICING / A NEW ERA OF TRANSPARENCY AND OPERATIONAL CHALLENGES

SŁAWOMIR WNUCZEK

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GABRIELA REMBIASZ

The introduction of the National e-Invoice System (KSeF) represents one of the most significant challenges for group companies in recent years. Although the KSeF is intended to simplify the invoicing process and reduce tax abuse, it also has a significant impact on transfer pricing, particularly with regard to the documentation and settlement of TP adjustments.

The transparency, automation and full visibility of invoices provided to the tax authorities mean that the current approach to TP adjustments will have to change in terms of both technology and organisation.

KSeF: a digital revolution in invoicing

The KSeF is a centralised electronic system for issuing, receiving and storing structured invoices.

From the moment of its implementation, all invoices, including corrective ones, will be issued in the standardised FA(3) format and sent to the tax authorities in real time. This means that transfer pricing adjustments documented by a corrective invoice will immediately be visible to the tax authorities.

This is particularly important for groups of companies where profitability adjustments or adjustments resulting from internal transfer pricing policies are often made.

The introduction of KSeF means that, if they are documented with invoices, such adjustments become immediately visible to the tax authorities. This has two consequences. Firstly, it becomes easier for the tax authorities to analyse whether the adjustments are justified. Secondly, companies must ensure the quality and consistency of their data, as any errors, inconsistencies, or lack of connection between the adjustment and the original transaction can be quickly detected.

TP adjustments in KSeF: documentation and operational challenges

In practice, TP adjustments are often only made at the end of the year in order to adjust margins or align settlements with established benchmarks.

In the new reality, e-invoices will need to be supported by a corrective invoice and contain a link to the original invoice, as well as a complete set of technical data.

For companies carrying out hundreds or thousands of transactions per month, manual assignment of corrections to individual invoices will be impossible. This means that they will need to implement advanced mechanisms for automatic invoice mapping, ERP system modifications or the integration of TP data with financial and accounting systems.

Inconsistencies between invoices, TP documentation, and KSeF data may result in adjustments being questioned by the tax authorities and disputes arising over the accuracy of intra-group settlements.

KSeF and the increased risk of transfer pricing inspections

Thanks to full access to invoices in the KSeF system, as well as the ability to integrate this data with other analytical tools such as JPK CIT, TPR reports and VAT records, the tax authorities have completely new capabilities for analysing and inspecting transactions between related entities.

The administration may be particularly interested in cases of transfer pricing adjustments that are not clearly linked to invoices documented in the KSeF system, as well as situations where downward adjustments do not affect previously posted transactions.

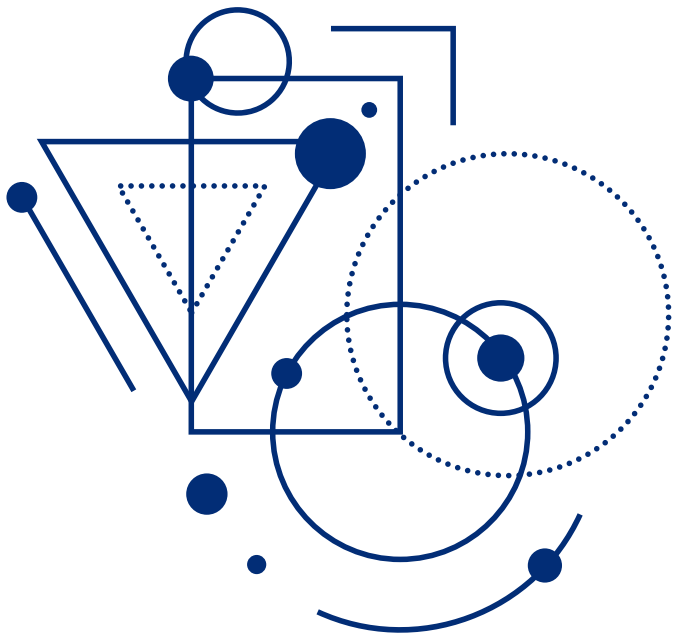
Inconsistencies between adjustments visible in the KSeF and information contained in TPR reports or transfer pricing documentation increase the risk. High-value adjustments, or adjustments relating to foreign entities, may also attract attention.

Such cases may trigger automatic alerts in the tax authorities' analytical systems, leading to more frequent and detailed transfer pricing inspections.

Summary

Digital transformation in taxation is becoming a reality, and the KSeF system is its most visible symbol. For groups of companies and related entities, this is not only a technological breakthrough, but above all a change in the approach to documenting transfer pricing adjustments.

In an era of full transparency, only entities that adapt their processes, systems and procedures in time will be able to avoid tax risks effectively and ensure full compliance with the new obligations.



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