

BS&O ALERT



Information

More time to file for ZUS exemption

Businesses from selected industries can file for an exemption from premiums for February 2021 until 30 April. They will also be able to use the stand-down benefit up to three times.

These are the changes that arise out of the Council of Ministers decree of 26 February 2021 on supporting traders affected by the COVID-19 pandemic (2021 Journal of Laws, item 371), which became effective on 28 February. This was the expiration date of the Council of Ministers decree of 19 January 2021 on supporting traders affected by the COVID-19 pandemic (2021 Journal of Laws, item 152).

After the changes, businesses from certain industries can apply for an exemption from the obligation to pay premiums for January 2021 or December 2020 and January 2021, or for February 2021. The new decree has moved the deadline for the submission of applications by a month, i.e. applications RDZ-B7 may be filed by 30 April 2021 at the latest.

The deadline for the provision of documents for the period covered by the exemption has also changed. It must be done by 31 March 2021, unless the business is exempt from the obligation to file returns and individual statements.

Under the new decree, businesses from certain industries can receive stand-down benefits up

to three times. Applications for such benefits may be filed within 3 months of the month in which the state of epidemic is lifted.

Applications for assistance from Crisis Shield 7.0 filed up until 27 February (before the effective date of the new decree) will be considered by ZUS based on the decree of 19 January 2021. Businesses applying for an exemption from the payment of premiums will, however, be subject to the new deadline for the submission of returns or individual statements – 31 March 2021.



Less time to correct ZUS IWA after accident premium raised

Businesses with at least ten employees will only have 11 months to correct information about work-related accidents. This change to go into effect as soon as 1 April 2021.

Extensive amendments to the Social Insurance Act and certain other acts, which include modifications to accident insurance, call for changes that are unfavorable for businesses. The changes could become effective as soon as 1 April 2021.

Businesses must each year (by the end of January) – using form ZUS IWA – report any serious or fatal accidents. The Social Insurance Office uses this information to calculate higher accident insurance premiums (raised by 1 percentage point). The information may be corrected, for example in situations when it turns out that an employee who had an acci-

dent that was originally classified as serious, underwent therapy and was able to regain his health and return to work. In such situations, the event is no longer treated as a serious work-related accident, and ZUS must use the correction to refund any overpaid premiums. Currently such corrections may be made at any time, even after a few years. And this is about to change.

After the amendments, remitters will only have until the end of the year following the year for which the ZUS IWA was filed. Thus the new regulations provide that a correction will only be possible until the end of the reporting period, which in situations of reporting by the end of January means that there is only 11 months to make a correction. Meanwhile, all other ZUS declarations may be corrected within five years.



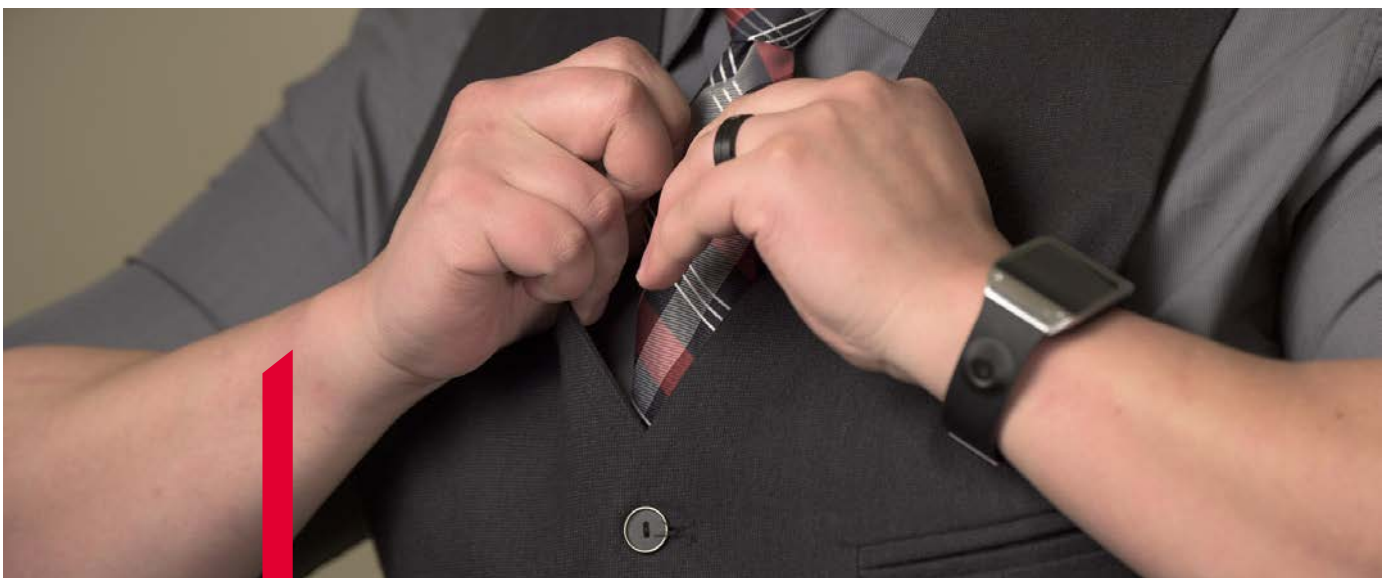
Termination of non-compete clause no later than on the last day of contract term

It is permissible to introduce a condition precedent to a post-termination non-compete agreement (Article 98 of the Civil Code), which conditions the effects of an act in law (post-termination non-compete agreement) on the employer's declaration made no later than on the last day of the employment contract term – decided the Supreme Court in its ruling of 20 February 2020 (case file ruled I PK 241/18).

It is the court's opinion that otherwise the state of uncertainty would be escalated on the part of the employee, who by refraining from engaging in a competitive activity would be exposed to having his legal position redefined at any time. Because a non-compete clause should protect the interests of both parties, it is reasonable to assume that the condition would lead to termination of the non-compete agreement only if it materializes before the employment contract termination date. The panel of judges further explained that failure to conclude a post-termination non-compete agreement at the time of concluding the related employment contract gives rise to a risk for the employer that later the employee will refuse to conclude it. This is therefore the only way the employer may effectively protect its interests. This in turn means that at the time of concluding an employment contract and a non-compete agreement it is

not possible to foresee the term of the employment contract or determine the extent of the need to protect the employer's interests, if, for example, the information viewed as particularly important will constitute such when the non-compete agreement becomes effective.

For the employee, uncertainty with regard to being able to choose employment ends on that day, and so this inconvenience may only pertain to the stage of searching for a job while being employed. The employee's uncertainty with respect to his legal situation until the end of the employment contract does not make it necessary for him to postpone searching for a job until after the employment relationship is terminated, but only requires him to be somewhat flexible, i.e. to simultaneously look for employment that takes into account the non-compete agreement and employment that is free from its stipulations. It cannot, therefore, be found that this condition would harm the employee (a weaker party to the contract) in such a way that he would not be able to make plans with regard to choosing employment. To the contrary, the employee is free to plan his professional future after the employment relationship is terminated, only must take into account the possibility that the employer will exercise the non-compete clause.



CIT taxable persons with more time to file annual returns

30 June instead of 31 March will be the new annual tax return filing deadline for CIT taxable persons whose tax year is concurrent with the calendar year. The same deadline will apply to those taxable persons whose tax year ended between 1 December 2020 and 20 February 2021. New CIT forms have also been published.

The minister of finance has prepared a decree that extends the annual CIT return filing deadline. Under the new regulations, the deadline for the filing of a declaration on the amount of income earned (loss incurred) in the tax year ended in the period from 1 December 2020 to 28 February 2021 has been extended until 30 June 2021. The same deadline applies to the payment of declared tax due or

the difference between the declared tax due and the total of advances collected since the beginning of the year.

Under currently binding regulations, CIT taxable persons should file their returns by the end of the third month following the end of the tax year. For taxable persons whose tax year is concurrent with the calendar year this means that they must file by the end of March (2020 returns should be filed by 31 March 2021).

Extended until 30 June 2021 is also the deadline for taxable persons taxed with the so-called Estonian CIT for providing data on revenue, costs and income arising out of their annual returns (see Article 7aa par. 9 point 2 of the CIT Act). The new deadline applies to those CIT taxable persons whose first year of



taxation begins in the period from 1 January 2021 to 1 March 2021.

Under currently binding regulations this should be done by the end of the third month of the first year of flat-rate taxation on company income.

Whereas the minister's of finance, funds and regional policy decree of 26 February 2021 amending the decree specifying the templates of corporate income tax declarations, returns, statements and reports has been published in the 2021 Journal of Laws (item 409). The decree contains new forms: CIT-8 - declaration on the amount of income earned (loss incurred) and corporate income tax due; CIT-8AB - declaration on the amount of income earned (loss incurred) by a tax group and on corporate income tax due; CIT-8/0 - information about income and tax deductions and on tax-free income (revenue); CIT/BR - information about tax base deduction of tax-deductible costs incurred for research and

development activities; CIT/8S - information about income earned on business activities conducted based on a permit to operate in a special economic zone; CIT/8SP - information about income earned on business activities conducted based on a permit to operate in a special economic zone; CIT/IP - information about the amount of income (loss) on qualified intellectual property rights and on corporate income tax; CIT/WW - information about the amount of income earned on the sale of virtual currencies and on corporate income tax; CIT/WZ - information about claims and liabilities that reduce or increase the tax base (loss) arising out of trading transactions; CIT/WZG - information about claims and liabilities that reduce or increase the tax base (loss) arising out of trading transactions, submitted by a tax group; CIT/KW - information about revenue, costs, income from restatement and tax due in connection with choosing flat-rate taxation of company income.



In short

↓ **New PIT-4R and PIT-8R forms for 2021 are here**

The minister's of finance, funds and regional policy decree of 3 March 2021 amending the decree specifying certain templates of personal income tax declarations, returns and statements has been published in the 2021 Journal of Laws (item 420). The decree introduces new PIT-4R and PIT-8AR forms. It is effective as of 9 March 2021.

↓ **Extended deadline for the payment of PIT advances**

The minister's of finance, funds and regional policy decree of 16 February 2021 on extending the deadlines for the payment by certain remitters of income and flat-rate income tax advances has been published in the 2021 Journal of Laws (item 318). The decree extends until 20 August 2021 the deadline for the

payment of income tax and flat-rate income tax advances collected from taxable persons by remitters in January 2021, on the condition that the said remitters have been negatively affected by COVID-19 and represent one of the industries specified in the decree (specified PKD codes). The decree became effective as of 18 February 2021.

↓ **Different terms of use of the MF tax portal**

The minister's of finance, funds and regional policy decree of 12 February 2021 amending the decree on the terms and conditions of using the tax portal has been published in the 2021 Journal of Laws (item 284). Among others, the new regulations pertain to identification and updating filings, as well as fines to the extent to which the head of the tax office is com-

petent to collect fines imposed on that natural person by way of such fines. The decree became effective on 15 February 2021 and applies to activities performed via the portal starting from 1 February 2021.

↓ **Changes in electronic filing of declarations**

The minister's of finance, funds and regional policy decree of 12 February 2021 amending the decree on the method used to file declarations and applications and on the types of electronic signatures they should bear has been published in the 2021 Journal of Laws (item 285). The decree pertains to selected income tax and VAT declarations, including returns filed for 2020. The decree became effective on 15 February 2021, but applies to applications filed via the tax portal starting from 1 February 2021.



Interpretations and rulings

No ZUS on remuneration of examination board members

➡ Members of examination boards that conduct qualification exams take their positions based on an appointment of a relevant public administration organ. Because in accordance with the Social Insurance Act appointment is not an act that gives rise to an obligation to pay social insurance premiums, no social insurance premiums are collected on the remuneration received by such persons for holding positions on examination boards — indicates an interpretation issued by ZUS on 18 February 2021 (number DI/100000/43/77/2017).

No social insurance premiums on remuneration of general partnership partners

➡ The eligibility of partners in a general partnership to get remunerated for handling the affairs of and representing the partnership based on the general partnership agreement does not result from the positions they hold at the partnership (employment at the partnership), but from the provisions of the general partnership agreement. There are, therefore, no bases to cover such remuneration with social insurance, and consequently to collect social insurance premiums on such remuneration — states an interpretation issued by ZUS on 19 February 2021 (number WPI/200000/43/86/2021).

No need to collect withholding tax on engineering services

➡ Remuneration for the provision of an engineering service acquired based on an agreement with a related party does not

constitute a receivable referred to in Article 21 par. 1 point 2a of the PIT Act, because it does not constitute remuneration for any of the services listed therein, or a similar service, and does not constitute a receivable referred to in Article 21 par. 1 point 1 of the PIT Act, because it is remuneration for the provision of a service rather than a license fee. There is therefore no requirement to collect withholding tax on its payment — indicates an individual interpretation issued on 10 March 2021 (0111-KDIB1-2.4010.20.2021.1.ANK).

Foreign exchange differences determined based on actually applied exchange rates

➡ In accordance with Article 15a par. 4 of the CIT Act, the actually applied exchange rates should be used to determine the amount of foreign exchange differences, i.e. as “the actually applied exchange rate”. If, therefore, a contract specifies that payments are to be translated using, for example, the average NBP exchange rate published on the last working day preceding the transfer date, the foreign exchange differences should be determined using that exchange rate — states an individual interpretation issued on 9 March 2021 (number 0111-KDIB1-1.4010.505.2020.3.BK).

Conviction for a crime precludes from presiding over a limited liability company

➡ A valid conviction for a crime precluded the petitioner’s employment as president of a limited liability company. Thus the concluded employment contract turned out to be invalid. In addition, the petitioner could not have been subject to mandatory social insurance, as he had failed to challenge the judgments delivered in the case — indicates a ruling issued by the Supreme Court on 30 September 2020 (case file I UK 263/19).

CALENDAR (most important deadlines)

- ✓ Payment for February 2021 of monthly PIT and CIT advances
- ✓ Payment for February 2021 of advances collected on employment income
- ✓ Payment by a holding company representing a tax group of the tax advance collected for February 2021
- ✓ Payment of lump-sum CIT-5
- ✓ Payment for February 2021 to PFRON
- ✓ Payment of tax advance for February 2021 by real estate company/real estate company tax representative on income from sale of real estate company rights (PIT-ISN and CIT-ISN).



- ✓ Payment of VAT for February 2021
- ✓ Filing of VAT-8, VAT-9M, VAT-12 for February 2021
- ✓ Filing of SAF_V7M for February 2021
- ✓ Filing of SAF_V7K for February 2021 (record section)
- ✓ Filing of VAT-13 by tax representative for February 2021
- ✓ Submission to PFRON of documents relating to additional financing of the wages of disabled employees for February 2021
- ✓ Reporting of sugar tax due for February 2021
- ✓ Reporting of retail sales tax PSD-1 for February 2021



- ✓ Submission to tax office (electronically) and to CIT taxable person without registered office or management in the territory of the Republic of Poland of information on the amount of revenue (income) earned IFT-2R for 2020
- ✓ Submission to ZUS of 2020 of data about work in special conditions or of special nature (ZUS ZSWA)
- ✓ Preparation of 2020 financial statements by an entity whose financial year is concurrent with the calendar year
- ✓ Submission of declaration of having prepared a local transfer pricing file/transfer pricing information – when the deadline to do so fell in December 2020
- ✓ Submission to tax office of ORD-U annual information on agreements concluded with non-residents for 2020 by taxable persons whose tax year is concurrent with the calendar year



- ✓ Payment of lump-sum income tax collected in March 2021 on amounts paid to foreign legal entities
- ✓ Payment of lump-sum income tax collected in March 2021 on dividend income and other amounts from shares of profits of legal entities, and provision of CIT-7 to taxable persons
- ✓ Payment by acquirer of lump-sum income for March 2021
- ✓ Filing of declaration on the amount of income from unrealized profits CIT-NZ for March 2021 and payment of tax due as indicated in that declaration



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Head of Business
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- ✓ Payment of ZUS premiums for March 2021 - individuals who pay only their own premiums
- ✓ Filing of INTRASTAT for March 2021



- ✓ Payment of ZUS premiums for March 2021 — other remitters of premiums (excluding individuals who pay only their own premiums and state and local budget entities)
- ✓ Payment to PPK for March 2021



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- ▶ tax services (tax compliance),
- ▶ day-to-day advisory services and hotline consultations in HR and payroll, accounting and tax areas,
- ▶ labor law advisory services,
- ▶ tax, legal and financial advisory services,
- ▶ management advisory services and accounting,
- ▶ audit,
- ▶ reporting and IT solutions.

The team of Bdo responds to the needs of companies, adjusting complex solutions both to the economic reality and to the specific features of their activities, at the same time putting quality and professionalism first. If there are in your Company issues that require support or advice in the above areas, we are the right partner for you and you are encouraged to contact us.

We will be happy to meet your needs and offer support.