

BS&O ALERT



Information

Contribution payer will be obliged to have electronic profile on the Social Insurance Institution platform starting from 2023

Pursuant to the provisions of the Act of 24 June 2021 amending the Act on Social Insurance System and some other acts, every person who is a contribution payer will be under the statutory obligation to hold its profile at the Electronic Service Platform [Platforma Usług Elektronicznych - PUE] of the Social Insurance Institution [ZUS] starting from 1 January 2023. Currently, such an obligation is vested on payers who settle contributions for more than 5 individuals. After the amendment is live, such obligation shall refer to all entrepreneurs, including owners of micro-companies, employing up to 5 individuals, as well as those paying the contributions for themselves only. The contribution payers, who do not have their PUE ZUS profile, have to create such by 30 December 2022. If they fail to do so, the Social Insurance Institution [ZUS] will create such profile on its own.

PUE ZUS profile is always created for an individual. To register and confirm the profile, an individual must be at least 13 years old. A payer who is an

individual, may create such profile for himself or herself, or authorise a third party (e.g., accountant or an accounting firm employee) to do so. PUE ZUS profiles of entrepreneurs, conducting business activity as individuals will be automatically assigned with the payer [płatnik] role, provided that the data of such profile will be compliant with the data on the contribution payer notification (e.g., Tax Identification Number NIP, Personal Identification Number PESEL). A contribution payer, who is a legal person or organization without legal personality must act through their statutory or regulatory attorneys, or authorise an individual, e.g., its employee or an accounting firm employee.

To create a profile, go to www.zus.pl and click the Register button [Zarejestruj w PUE] (on the top). Then select, who is the profile owner - you may choose from: individual [Dla Ciebie], entrepreneur [Dla przedsiębiorców] or company [Dla firm]. The registration form is slightly different, depending on the selection made. If you select to register as entrepreneur [Dla przedsiębiorców], one shall also provide Tax Identification Number NIP, in addition to personal data.

PUE ZUS website allows for dealing with most of the cases related to social insurance in any place and at any time. Entrepreneurs may file applications with the Social Insurance Institution [ZUS] and use a free ePłatnik [ePayer] app to manage social insurance documentations. Entrepreneurs may also manage their settlements with the Social Insurance Institution, view sick leaves of their employees, create electronic documents with the data downloaded from the Social Insurance Institution records and forward such documents to other institutions (e.g. bank or another office).



The 2022 stocktaking may now start

Entities, whose financial year is equal to calendar year, may start stocktaking as of 1 October. The stocktaking may start no sooner than three months before the end of the financial year, namely on 1 October, and must be completed by 15 January of the consecutive year at the latest.

The rules for stocktaking regarding individual assets and liabilities are provided for in Chapter 3 of the Act of 29 September 1994 on Accounting. The Act regulated to take stock of assets and liabilities as of the last day of each financial year. The purpose of stocktaking is to determine the actual status of property (assets) and their respective origin (liabilities), identification of stocktaking differences, reasons thereof and their appropriate settlement in the books. The stocktaking shall be performed pursuant to the selected methodology, one out of three available.

Cash asset stocktaking (except for the cash on bank accounts), tangible securities, tangible current assets, tangible assets and real estate in investments, as well machinery counted as capital work in progress shall be performed by listing their count in physical inventory, evaluation of the count, comparison against books and accounts, and explanation and settlement of any discrepancies.

Financial assets on bank accounts or kept by

other entities, including intangible securities, receivables including loans and proprietary assets entrusted to contractors shall be counted by means of the confirmation issued by banks and contractors that the amounts of the said assets recorded in the entity books are correct, and in case of any discrepancies, they shall be explained and settled.

Tangible assets, access to which is significantly difficult, land plots and right qualified to real estate, disputed and doubtful receivables, and in case of bank assets, also debts at risk, debts and liabilities towards entities not obliged to keep the books, debts and liabilities under public law, as well as assets and liabilities counted and not counted with other methods (physical inventory or reconciliation) if such physical inventory or reconciliation was not possible for a reason, the stocktaking shall be made by comparison of the books against appropriate documents, and verification of individual item value. The head of the entity shall be responsible for the stocktaking. At the same time, the Accounting Act requires the stocktaking to be performed pursuant to the stocktaking ordinance and stocktaking instructions.

More on stocktaking see our financial review alert at www.bdo.pl



Algorithms used by employers controlled by the trade unions

The employers will be under the obligation to provide information regarding the parameters, rules and instructions constituting the basis of an algorithm or artificial intelligence system affecting the decision-making regarding the work and pay terms and conditions, access to employment and its maintenance, including profile making at the request of the company trade union.

Pursuant to the currently binding Art. 28 of the Act on Trade Unions, the employer shall be under the obligation to provide information important for trade union operation, in particular: work and pay terms and conditions; employer's operation and financial standing in terms of employment and expected modifications thereof; status, structure and expected modifications of current employment including the actions aimed at maintaining the employment levels; action that may significantly affect the work organization or basis of employment at the request of the company trade union within 30 days from the receipt of such request. Soon this obligation shall be extended, so that pursuant to the new Art. 28 clause 1 point 5, the employers will additionally be under the obligation to provide information regarding the parameters,

rules and instructions constituting the basis of an algorithm or artificial intelligence system affecting the decision-making regarding the work and pay terms and conditions, access to employment and its maintenance, including profile making.

This modification is provided for in the draft amendment to the Act on Trade Unions. Most importantly, the new provision shall be binding to all entrepreneurs, irrespective of the employment rates.

The draft suggests, that the amendment shall allow the company trade unions to verify the actual work rules within such company.

It is worth noting, that pursuant to Art. 28 of the Act on Trade Unions, the scope of information provided shall always be appropriate to the proper and legal trade union operation requirements - including the provisions on employer's company secret protection, personal data protection and employee privacy protection.

The draft is currently at the stage of public consultation. The draft has not yet been discussed by the Parliament. However, also the permanent commission for legal regulation of digital algorithms worked on this draft, as informed at the prawo.pl website.



The NIP-2 form shall be complemented with sections allowing for VAT groups' notification

The Ministry of Finance has prepared a draft ordinance amending the ordinance on identification and update notification forms, as well as supplementary data notification forms. The amended provisions shall be in full force as of 1 January 2023.

The modifications of the ordinance on identification and update notification forms as well as supplementary data notification forms planned by the Ministry of Finance intends to provide for a new template form related to the register and identification of taxpayers, withholding agents as well as social and health insurance contribution payers who are natural persons, legal entities or organisations without legal personality (NIP-2).

The need of the form modification is the result of the corrections required in relation to the Act of 8 June 2022 on Amendment to some Acts aimed at automation of some cases dealt with by the National Revenue Administration, with respect to which the new provisions shall become valid as of 1 January 2023 (Art. 6 point 1 letter b of the draft ordinance). This refers to the provisions of VAT groups going live.

The draft modifications cover amendment to Annex 1 to the amended ordinance of the

Minister of Finance, Funds and Local Policy of 19 July 2021 on identification and update notification forms as well as supplementary data notification forms (Journal of Laws item 1404) being the template of the NIP-2 form.

The Annex specifies the template of the identification/update notification filed by a legal entity or organisation without legal personality, who is also a taxpayer or withholding agent (NIP-2). The template of the NIP-2 form (13), except for order and editorial updates, including updated legal act journals, provides for the following modifications:

- ▶ section D item 86 - box no. 5 described „VAT group” and with reference no. 5 reading: „The registration shall be made on behalf of the VAT group by the VAT group agent”,
- ▶ reference no. 5 in item 89 (the „in the process of formation” status shall generally refer to companies, but may also refer to other entities, that may have such status pursuant to the law) has been deleted,
- ▶ section D.4. - added at the end: „/ MEMBER OF VAT GROUP”,
- ▶ added in item 111 at the end of the description next to box no. 1 and no. 2: „/ VAT group”,
- ▶ added in item 113: box no. 3 described as: „branch of a taxpayer, whose registered office is outside Poland (refers to VAT group)”,
- ▶ the name of item 114 has the following new reading: „Participation form - boxes no. 1 and 2 refer to capital groups, boxes no. 3 and 4 refer to VAT group (mark the appropriate box):”, added new box no. 3 described: „VAT group agent” and box no. 4 described: „VAT group member”, (it shall be noted that VAT group agent is also a VAT group member),
- ▶ item 117 description was complemented before asterisk with the following reading: „ and for a branch (box no. 3 in item 113) - the National Court Register [KRS] number”. The draft is currently at the stage of public consultation.



In short:

The number of mobbing complaints to the National Labour Inspectorate is growing

↓ The Chief Labour Inspector announced that 1003 mobbing complaints were filed with the National Labour Inspectorate ([Państwowa Inspekcja Pracy] PIP) throughout the first half of 2022. The highest number of complaints from January to June were filed in Warsaw, Katowice and Gdańsk. The National Labour Inspectorate performed 775 inspections. In 2021 there were 1666 complaints, in 2020 - 1538, and in 2019 - 1081. The Chief Labour Inspector statistics suggest that

anonymous complaints constitute 13% of all reports filed in the first half of 2022.

Throughout 2021, 14 % of complaints were filed anonymously, in 2020 - also 14 %, and in 2019 - 18 %.

TPR requests deadline lapsed at the end of September

↓ The currently binding provisions of law state that the transfer process requests (TPR) as well as the statement on preparation of local transfer price documentation (TP statement) may be filed by the taxpayers by 30 September 2022. This deadline shall apply to the taxpayers, whose original deadline was

between 1 January 22 and 30 June 2022. If the original deadline was between 1 July 2022 to 31 December 2022, the deadline to file the TRP requests shall be extended by 3 months. Such extensions result from the provisions of the Act of 8 June 2022 on Amendment to some Acts aimed at automation of some cases dealt with by the National Revenue Administration. [Read more about this topic at the News tab on our website.](#)

Simplified modification of the terms and conditions of employment of foreigners at Polish companies

↓ Increased working time schedule, increased monthly or weekly working time as provided by the foreigner's work permit, with simultaneous increase of wage accordingly, shall no longer require amendment to or issuance of a new work permit. The employer shall only notify the authority issuing the work permit about the increase - pursuant to the draft new Act on Employment of Foreigners (form no. 400 published on 12 September 2022) prepared by the Ministry of Family and Social Policy. The drafted Adt assumes thorough electronicization of procedures related to work permit issuance for foreigners. Most of the new provisions shall become valid within 7 days from their publication in the Journal of Laws.



Fiscal cash registers for car wash companies from April 2023

↓ The obligation to use fiscal cash registers by car wash companies shall be binding from 1 April 2023 instead of 1 October 2022 - pursuant to the draft ordinance amending the ordinance on the exempts from the obligation to keep the sales registers by means of cash registers published by the Ministry of Finance. The draft ordinance provided for the postponement of the sales register obligation with (fiscal) cash registers for the services covering car washing, cleaning and similar (Polish Classification of Goods and Services 45.20.30.0), including those customer-operated, that will receive maintenance-free payments in cash (coins or banknotes) or another form (cashless) by 1 April 2023. The ordinance shall become valid on the day following its publication in the journal of Laws.

New ordinance on the late payment interest published

↓ The announcement of the Minister of Finance of 16 September 2022 on the late payment interest rate on tax debt, decreased late payment interest rate on tax debt and increased late payment interest rate on tax

debt was published at the Official Journal of the Republic of Poland [Monitor Polski] under item 905. Pursuant to the announcement: the late payment interest rate on tax debt shall be 16.50% of the outstanding amount yearly; the decreased late payment interest rate on tax debt shall be 8.25% of the outstanding amount yearly; the increased late payment interest rate on tax debt shall be 24.75% of the outstanding amount yearly.

New minimum work remuneration provisions published in the Journal of Laws

↓ The ordinance of the Council of Ministers of 13 September 2022 on the minimum work remuneration and the minimum hourly wage rate in 2023 was published in the Journal of Laws under item 1952. Pursuant to the ordinance, the minimum work remuneration as of 1 January 2023 shall be PLN 3490, while the minimum hourly rate shall be PLN 22.80. As of 1 July 202, the minimum work remuneration shall be PLN 3600, while the minimum hourly rate shall be PLN 23.50.

The European Parliament passed the minimum work remuneration provisions

↓ The European Parliament passed a new Directive on the appropriate minimum work remuneration in the European Union. The new Directive shall apply to all

the EU employees, working based on an employment contract or are in an employment relationship. The amount of the minimum work remunerations continues to be determined by the Member States individually. However, the Member States will have to guarantee that such remuneration provides for adequate living taking into consideration the cost of life and general compensation level. The Member States may also determine a national basket of goods and services pursuant to their actual prices or determine such basket as 60% of the gross remuneration median value; or 50% of the average gross remuneration.

Draft ordinance on the application to issue general interpretation

↓ The draft ordinance provides for a new ORD-OG application form to issue general interpretation. The ordinance was supposed to become valid as of 1 October, but is still in stipulation process. The application form to issue general interpretation regarding the instructions on letter delivery in relation to the application to issue general interpretation shall need to be amended pursuant to the amended delivery provisions. Pursuant to the information provided by the Ministry of Finance, the applications to issue ORD-IN, ORD-WS and ORD-OG may be filed through a e-Tax Office profile.

High EUR/PLN exchange rate means higher tax thresholds in 2023

↓ As every year, also on 1 January 2023 all the thresholds expressed in EUR provided for in a tax law shall be changed. It concerns mainly the thresholds for the so-called minor taxpayers, one-off depreciation, lump-sum tax on registered revenue, cash accounting or obligation of keeping full accounts. The calculation of most thresholds expressed in EUR shall take place at the average exchange rate published by the National Bank of Poland on the first business day of October in a given fiscal year, rounded up to PLN 1000. In 2022 the first busi-

ness day in October, was Monday, 3rd. Pursuant to the National Bank of Poland exchange rates no. 191/A/NBP/2022, the average EUR/PLN exchange rate as of first business day of October 2022 (namely 3 October) was PLN 4.8272 (last year the exchange rate was PLN 4.5951).

[More on this topic in our tax alert.](#)

Large companies shall file income tax report

↓ CIT taxpayers will be under the obligation to file reports where and what income tax they pay. This amendment is to be implemented with the Accounting Act re-enactment, the assumption of which were published in the

Parliament's legislative works. The draft regarding implementation of the Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (EU Official Journal L 429 of 1.12.2021, page 1). Data contained in such report will need to be disclosed individually to all EU member states, where the company operates, as well as to tax jurisdictions not abiding by the good management standards for tax purposes (so-called "tax heavens"). [Read more about this topic at the News tab on our website.](#)



Important interpretations and rulings:

Copyright income must be listed in a contract of mandate

➔ If the author's fee is added to the remuneration amount but not determined in the contract as a certain amount, and the time required to produce copyrights and related activities is not counted, determined or recorded separately during the mandate, the remuneration under such contract of mandate should not be qualified as copyrights (Art. 18 of the Act on PIT – property income) but shall be qualified as a whole to the income derived from the contract of mandate (Art. 13 point 8 letter a) – as ruled by the Head of the National Tax Information in an individual interpretation of 25 August 2022 (file ref. no. 0114-KDIP3-2.4011.663.2022.2.BM).

Tax authority shall not be authorised to ask the taxpayer any additional questions regarding interpretation of legal provisions

➔ Tax authorities may not transfer the liability for legal interpretation of the facts declared to the taxpayer. The applicant's obligation is to declare the facts, while the authority's obligation is to evaluate the legal status of the declared facts, not only in the light of the tax provisions. The authority shall also interpret many Acts not related to tax affairs, as long as such interpretation affects the final tax evaluation – pursuant to the judgment of the Supreme Administrative Court of 20 September 2022 (file ref. no. III SA/Wa 520/21).



Reimbursement of the occasional family commute with no PIT tax exempt

➔ The employees occasionally visiting their family at their permanent residence with public transport are not under the category of employees in official delegation, therefore the subjective exempt referred to in Art. 21 clause 1 point 14 of the Act on PIT (exempt covering the amounts received by employees on account of official delegation as well as relocation and settlement allowance due to official delegation up to 200% of the remuneration for the month of relocation) shall not apply. Also the exempt referred to in Art. 21 clause 1 point 112 of the Act (the exempt regarding reimbursement of the travel cost

to reach the office) shall not apply to the cost of transportation to and from the permanent residence address to visit relatives, because the obligation to bear such cost by the company is not directly provided for in the provisions of other Acts – as explained in the individual interpretation of 1 September 2022 by the Head of the National Tax Information (file ref. no. 0114-KDIP3-1.4011.743.2022.1.MS2).

Cost needs to be related to a specific revenue source

➔ Tax deductible revenue shall not include the cost of any revenue, but only the cost related to revenue from a specific source. Therefore, tax deductible cost of business activity conducted by ex-partner in a civil law partnership may not include the expenditures on the property that remained in the partnership, not currently used in her new business activity – as determined by the Supreme Administrative Court in its judgment of 11 October 2022 (file ref. no. II FSK 382/20).

Parking a company car at your house does not exclude the right to make full VAT deduction

➔ A car is used solely for business purposes by the taxpayer when the taxpayer determined the rules of using company car, implements mileage logbook, and taking into consideration the nature of the taxpayer's business, these two documents by assumption jointly exclude the use of a company car for purposes not related to business activity. Hence, when the procedures adopted by the taxpayer render it impossible to use a company car for private purposes, a tax authority is unable to determine, due to lacking evidence, that facts regarding the use of company car for business purposes only are not compliant with the appellant's statement. This is particularly unacceptable during interpretation proceedings – as determined by the Regional Administrative Court in Rzeszów (judgment of 28 July 2022; file ref. no. I SA/Rz 272/22). **More on this topic in our tax alert.**



CALENDAR (most important deadlines)

- ✓ payment of Social Insurance contributions for September 2022 - other contribution payers
- ✓ monthly personal and corporate income tax advance payment for September 2022
- ✓ monthly personal and corporate income tax advance payment for Q3 2022
- ✓ payment of the deducted tax advance payments under employment for September 2022
- ✓ payment of the tax advance payments or lump sum tax deducted by withholding agents for September 2022
- ✓ payment of the tax advance payment by a holding company representing capital group for September 2022
- ✓ payment of the lump sum tax if the dividend and other income from a share in profits of legal persons was disbursed contrary to the income appropriation in the CIT-5 statement in September 2022
- ✓ payment of the tax advance payment by a real estate company (PIT-ISN and CIT-ISN) for September 2022
- ✓ payment of the income tax on the revenues from a tangible assets in the form of a building for September 2022
- ✓ payment to the State Fund for Rehabilitation of Disabled People for September 2022



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- ✓ payment of VAT for September 2022
 - ✓ payment of VAT for Q3 2022
 - ✓ filing VAT-8, VAT-9M and VAT-12 declarations for September 2022
 - ✓ filing JPK_V7M report for September 2022
 - ✓ filing JPK_V7K report for August 2022 (accounting section) and for July, August and September 2022 (declarative section)
 - ✓ filing the summary of the intracommunity VAT-UE transactions for September 2022
 - ✓ filing VAT-13 declaration for September 2022
 - ✓ filing the financial support for remunerations of disabled employees for September 2022 with the State Fund for Rehabilitation of Disabled People
 - ✓ payment of sugar tax due for September 2022
 - ✓ retail sales tax settlement PSD-1 for September 2022



- ✓ filing the application for financial support regarding the pension and retirement contributions paid for September 2022 by the disabled individuals conducting business activity with the State Fund for Rehabilitation of Disabled People
- ✓ filing (electronically) the transfer prices request TPR-C due in July 2022 with the Head of the National Revenue Administration
- ✓ filing (electronically) a statement on preparation of local transfer prices documentation due in July 2022 with the tax office



CALENDAR



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- ✓ payment of the lump sum income tax deducted in October 2022 on the dividends and other income from a share in profits of legal persons, filing CIT-7 declaration to withholding agents
 - ✓ payment of the lump sum income tax due for October 2022 by a surviving company
 - ✓ filing the declaration on the amount of unrealised gain income (PIT-NZ and PIT-NZS) for October 2022
 - ✓ filing the declaration on the amount of unrealised gain income CIT-NZ for October 2022 and payment of the tax due calculated in the said declaration



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- ✓ filing the INTRASTAT report for October 2022



- ✓ payment of Social Insurance contributions for October 2022 - corporate contribution payers
- ✓ payments of the Employee Capital Plans (PPK) contributions



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CALENDAR



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