

# BS&O ALERT



## Information

**The Social Insurance Institution (ZUS) will be authorised to set the value of the health contribution ex officio**

**T**he Social Insurance Institution will be authorised to set ex officio the base for assessment of the health insurance of an insured conducting a business activity who has not filed the information on monthly income or revenue on the business activity. The extensive amendment of the Act on CIT (Journal of Laws. item 2180) provides for introduction of multiple changes in the Act on CIT that modify the changes introduced as part of the so-called Polish Deal significantly. These changes regard, inter alia: lump-sum on

income of companies, entities obliged to prepare the local file, principles of settlement of the so-called debt financing costs, principles of calculation of the taxation base if the taxpayer earns income taxed with various rates, tax on income of a foreign controlled entity, tax on shifted profits, tax on revenue on buildings, taxation of holdings, exemption of dividend income from tax, obligations of the taxpayers of lump-sum income tax, obligation of taxpayers having establishments (branches) located within the area of a local government unit other than proper due



to its registered office to file information via means of electronic communication, temporary exemption regarding obligations imposed on taxpayers obliged to pay the minimum income tax.

The new regulations change also several other acts. In this area, the most interesting change is the one in the Act on Healthcare Services Financed with Public Funds regarding ex officio determination by the Social Insurance Institution of the base for assessment of the health insurance of an insured conducting a business activity who has not filed the information on monthly income or revenue on the business activity.

In such a case, ZUS will set the rates ex officio, adopting the minimum wage effective on the first day of the contribution year or 60%

of the average monthly wage in the private sector in the fourth quarter of the previous year, including distributions from profit, announced by the President of Statistics Poland in the Official Journal of the Republic of Poland "Monitor Polski" as the base for assessment of the contribution. The contribution amount determined that way may change as a result of an audit or if additional data are provided by the Head of the National Revenue Administration or the proper head of the tax office.

The latter means that, ultimately, contributions will have to be paid at amounts resulting from income or revenue earned in compliance with the new principles of calculating them effective as of 1 January 2022.





## The minimum value of the base for assessment of the contribution for the Labour Fund will be increased as well.

**T**he Government is planning to reduce the amount of salary on which the employer is obliged to pay the contribution for the Labour Fund. Currently, it is a salary amounting at least to the minimum wage, while after the change it will amount to only a half of the minimum wage.

The Ministry of Family and Social Policy has submitted the bill on professional activity (form no. UD 399) for inter-departmental arrangements and public consultations.

According to that bill, the mandatory contributions for the Labour Fund will be determined based on the amounts being the base for assessment of contributions for old-age and disability pension contributions, without application of the limitation referred to in Article 19(1) of the Act on the Social Insurance System of 13 October 1998, equal – as converted per month – at least a half of the minimum wage. Currently, the contributions are paid based on the amount of the minimum wage. This means an increase in costs for employers. It must be noted, however, that this applies to persons

earning less than the minimum wage.

At the same time, a minor change is to be made in the catalogue of entities for which mandatory contributions for the Labour Fund are paid – as is noted in the substantiation to the bill.

It is worth reminding that the value of the mandatory contribution for the Labour Fund for the given year is determined in the Budget Act. In 2022, it amounted to 1.0% of the base for assessment of the old-age and disability pension insurance. The contributions are collected by the Social Insurance Institution and transferred to the bank account of the Labour Fund.

The Labour Fund is a state earmarked fund. The money collected in the Fund is at the disposal of the minister proper for labour matters. The Labour Fund is used to finance tasks consisting in promotion of employment, mitigation of effects of unemployment and professional activation, including through: unemployment benefits, activation allowances, professional and life-long learning costs.



## A government platform for conclusion of contracts of employment and mandate will be created

**T**he Council of Ministers has adopted a bill on an ICT system supporting certain contracts and submitted it to the minister of family and social policy.

An ICT system will be developed based on the new regulations to facilitate proper calculation and payment of taxes and insurance contributions. At the same time – as the government claims - employers and clients will gain a tool to keep contracts and archive documentation. The new solutions will reduce the workload of micro-entrepreneurs, employees other than micro-entrepreneurs and hiring less than 9 persons, farmers and natural persons.

The new solution will enable conclusion of contracts via an ICT system based on ready-made models. The ICT system will support the process of conclusion and storage of contracts and making employee documentation available. It will support contracts of employment and contracts of mandate. The scope of application of the trusted signature is to be extended with conclusion of: contracts of employment, contracts of mandate, service contracts to which regulations on mandate apply as well as activating contracts. The solution will be integrated with [praca.gov.pl](http://praca.gov.pl) and [biznes.gov.pl](http://biznes.gov.pl) systems.

The model contracts made available will contain elements required to conclude the given contract type in compliance with the law. The new regulations are to encourage conclusion of contracts and reduction of the issue of unregistered work. Concurrently, the solution is oriented at conclusion of typical contracts and will not provide a comprehensive alternative for the current formula of conclusion of contracts of employment.

Within the entire term of the contract of employment and for the period of 10 years after termination thereof, both parties to the contract will have access to the documents connected with it. Any potential winding-up of the entrepreneur's business will not affect the access to the documents.

Not only will the system offer ready-made model contracts, but its functions will also include: settlement of the employee's holiday leaves, relieving the employer of the obligation to keep the employee documentation separately, filing of ZUS and CAS notifications via the system as well as calculation of due contributions and tax advances.

The new regulations are to enter into force 30 days after publication in the Journal of Laws and the ICT System is to be launched by 2025. The minister of family and social policy may announce earlier system launch.





## Possibility to submit eight different declarations in the PIT-2 declaration

Further changes in the Act on PIT regarding submittal of declarations and applications by payers of income tax advances will enter into force as of 1 January 2023. Thus, the official model PIT-2 declaration will also change and will contain eight different declarations and applications. In connection with further changes in the PIT regulations for payers entering into force on 1 January 2023, a new version of the PIT-2 (9) form will become effective as of the same day. The new form contains 8 different declarations and applications that can affect the tax on salary and benefits received by the taxpayers calculated by the employer or other payers. Right now, PIT-2 contains only one declaration – regarding specification of the payer as proper for reduction of the monthly income tax by the amount equal to 1/12 of the tax reducing amount. It must be noted that when filing the new PIT-2, only the parts of the form where a

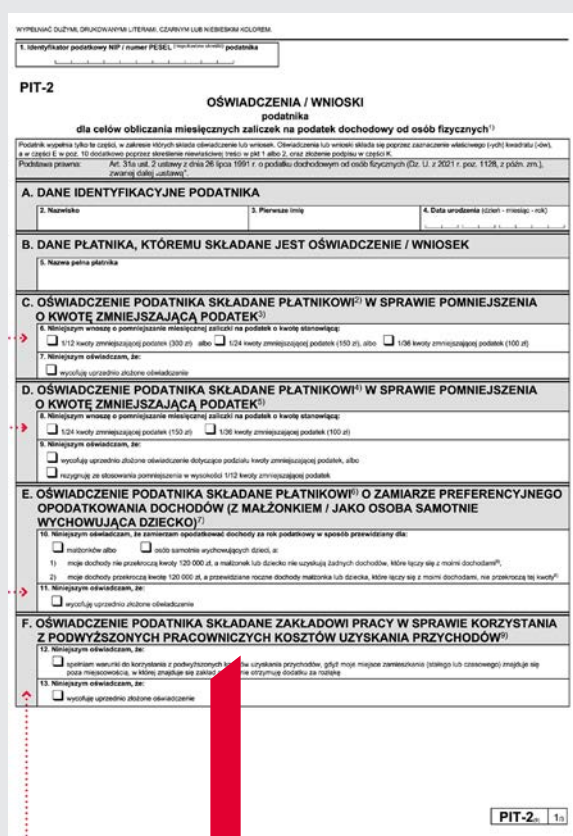
declaration or application regarding the payer is submitted must be completed. Completing all declarations is not required.

Thus, the most important change is that in the declaration the taxpayer will have the possibility to authorise max. 3 payers (including clients, pension authorities) to apply the deduction of 1/12 of the tax reducing amount, at the same time specifying the amount to be deducted, i.e. corresponding to 1/12 (PLN 300 for one contract), 1/24 (PLN 150 for two contracts) or 1/36 (PLN 100 for three contracts) of the tax reducing amount.

As of 1 January 2023, the taxpayers will also have the option, subject to certain conditions, to file the application for non-collection of PIT advances. The taxpayer can file such an application if he/she expects that the income subject to taxation according to the tax scale earned by him/her will not exceed the amount of PLN 30 thousand (i.e. the tax-free amount) in the fiscal year. The taxpayer will be also obliged to withdraw such an application immediately if he/she determines that his/her income will exceed that amount. After the taxpayer withdraws the application for non-collection of advances in the given fiscal year, the payer will calculate the advances but will not reduce the tax advance by the monthly tax advance reducing amount.

Just as currently, as of 2023 the payer will start acting based on the declaration or application no later than as of the month following the month of receiving it. This means that the payer can start acting based on the declaration or application in the same month when the payer receives it, if possible and feasible.

The declaration (PIT-2) must be filed again if the factual status changes - annual filing will not be required. An exception is part J of the document which regards mom-collection of tax advances in the given fiscal year.



## In short:

### **New limits of contributions for pension programmes in 2023 are known**

↓ The announcements of the minister of family and social policy on the value of contributions paid for pension saving programmes in 2023 have been published in "Monitor Polski". Value of limits: Individual Pension Protection Account (IKZE): PLN 8 322; Individual Pension Protection Account (IKZE) of a person conducting a non-agricultural business activity: PLN 12 483; Individual Pension Account (IKE): PLN 20 805; Employee Pension Scheme (PPE): PLN 31 207.50 (amount correspon-

ding to the sum of additional contributions paid by the participant for one PPE).

### **The Social Insurance Institution has made a mobile application available**

↓ mZUS is the first mobile application of the Social Insurance Institution. It enables quick access to information and applications for family benefits. The functionalities of mZUS application include: easy filing of the application for 500+ and 300+ benefits; tracking of the status of filed applications and information on benefit payment; receipt of ZUS notifications – e.g. a new

benefit period; reading of messages received in the PUE ZUS profile. The functions will be extended in the future.

### **There will be no regulations on hidden dividend in 2023**

↓ A new Act Amending the Act on Personal Income Tax and Certain Other Acts was published at the end of October. The said amendment revoked the provisions of the Act of 29 October 2021 regarding the so-called hidden dividend (these regulations will enter into force as of 1 January 2023). The regulations stipulated that if a paid consideration is found to be a hidden divi-



dend, the taxpayer could not recognise such an expense as a tax-deductible expense. For more information on that subject, visit our website.

#### **ZUS has published an accounting on voluntary sickness insurance**

↓ The amount of 250% of the forecasted average wage applied in the period from 1 January 2023 to 31 December 2023 for the purpose of determination of the base for assessment of sickness insurance of persons who are subject to voluntary sickness insurance is equal to PLN 17 337.50 monthly – as results from the communication of the President of the Social Insurance Institution ("Monitor Polski", item 1045).

#### **The limit above which no contributions will be collected in 2023 has been announced**

↓ Based on the announcement of the minister of family and social policy ("Monitor Polski", item 1014), the amount of limitation of the annual base for assessment of contributions for old-age and disability pension contributions in 2023 is PLN 208 050, and the amount of the forecasted average wage adopted for the purpose of determination of the above equals to PLN 6 935. This means that in 2023 the old-

-age and disability contributions will not be collected on salaries after the amount of PLN 208 050 is exceeded.

#### **Mileage allowance rates for employees will be increased significantly**

↓ The draft regulation of the minister of infrastructure is already at the stage of review and opinion and provides for a significant increase of the so-called mileage allowance. The new regulations stipulate that the maximum value of individual rates per 1 km of the trip shall be PLN 0.89 (currently PLN 0.5214) for a passenger car with cylinder capacity up to 900 cm<sup>3</sup>, PLN 1.038 (currently PLN 0.8385) for a passenger car with cylinder capacity over 900 cm<sup>3</sup>, PLN 0.69 (currently PLN 0.2302) for a motorcycle and PLN 0.42 (currently PLN 0.1382) for a moped. For

more information on that subject, see our alert.

#### **The government has adopted regulations concerning indexation of old-age and disability pensions**

↓ The Council of Ministers has adopted a bill amending the act on old-age and disability pensions from the Social Insurance Fund and certain other acts submitted by the minister of family and social policy. In 2023, old-age and disability pensions will be increased by the indexation rate - currently expected to reach 113.8%. The minimum raise amounting to PLN 250 will be guaranteed as well. The lowest old-age pension and disability pension due for full incapacity for work as well as the family pension and social pension will be increased to PLN 1 588.44.





## Important interpretations and rulings:

### **Loss of financial liquidity may authorise to late payment of contributions**

➡ According to the Appellate Court, the consent for late payment of the contribution under Article 14(2)(2) of the Act on Insurance does not entail the requirement of occurrence of a particularly justified exceptional case or particularly justified circumstances. This provision does not make the consent for late payment of contributions conditional on lack of fault on the part of the insured party. All the act requires is occurrence of a "justified" case, i.e. a case that objectively justifies the delay and explains why the contribution is not paid on time. The court found loss of financial liquidity caused by the pandemic to be such a case (judgement of 19 July 2022, case file ref. no. III AUa 1479/21).

### **No health insurance contribution on depreciation write-downs from before 2022**

➡ The base for assessment of the health insurance contribution is the income on primary business activity which is not increased by the value of depreciation write-downs - as the

Social Insurance Institution explained in the ruling of 8 November 2022 (ref. no. WPI/200000/1138/2022). This results from the changes in regulations of 9 February 2022. The regulations provide also that in case of sale of fixed assets that were depreciated prior to 2022 for PIT purposes, when determining the proceedings on their sale for the purpose of payment of the health insurance contribution, such income is increased by the depreciation write-downs recognised prior to 2022 and charged to tax-deductible expenses.

### **New investments in the Polish Investment Zone (PSI) are also exempted**

➡ The scope of the tax exemption applicable to taxpayers investing in the Polish Investment Zone (PSI) in the case of extension of an existing establishment includes the entire income on the production activity specified by territory and type in the decision on support – as results from the judgement of the Supreme Administrative Court of 9 June 2022 (case file ref. no. II FSK 357/21). The entire income covered by the decision on support should be exempt from taxation with income tax in the Polish Investment Zone – both the income on new investments as well as the income on existing business.

### **Recurring considerations provided to a company not charged with ZUS contributions**

➡ The catalogue of titles covered by the obligation to pay social insurance does not include natural persons providing recurring considerations against a fee within the meaning of Article 176 of the Commercial Companies Code only under the provisions of the Articles of Association. The mere fulfilment of the obligation to provide the considerations contemplated in the provision referred to above without conclusion of a contract of employment, service contract, etc. to that effect cannot give rise to the insurance obligation – as explained by ZUS in the individual ruling of 7 October 2022 (ref. no. DI/100000/43/948/2022).





## CALENDAR (most important deadlines)

- ✓ payment of ZUS contributions for October 2022 - other payers of contributions
- ✓ payment of the monthly personal and corporate income tax advance for October 2022
- ✓ payment of advances collected for income under the employment relationship for October 2022
- ✓ payment of collected income tax advances or lump-sum income tax by the payers for October 2022
- ✓ payment of the tax advance collected for October 2022 by the dominant company representing a tax capital group
- ✓ payment of the due lump-sum tax if the dividend income and other income on share in profits of legal persons was expended in October 2022 not in compliance with the intended allocation specified in the declaration (CIT-5)
- ✓ payment of the tax advance by a real estate company for October 2022 (PIT-ISN and CIT-ISN)
- ✓ payment of the income tax on income on a fixed asset in the form of a building for October 2022
- ✓ payment for PFRON for October 2022



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- ✓ payment of VAT for October 2022
  - ✓ filing of VAT-8, VAT-9M, VAT-12 declarations for October 2022
  - ✓ sending of JPK\_V7M file for October 2022
  - ✓ sending of JPK\_V7K file for October 2022 (records-related part)
  - ✓ sending of summary information on intra-Community EU-VAT transactions for October 2022
  - ✓ filing of VAT-13 declaration for October 2022
  - ✓ filing of documents regarding co-financing of salaries of disabled employees with PFRON for October 2022
  - ✓ settlement of sugar tax due for October 2022
  - ✓ settlement of retail sale tax PSD-1 for October 2022



- ✓ filing of the application for refund of old-age and disability pension contributions paid for October 200 by disabled persons conducting a business activity with PFRON
- ✓ filing (electronically) of the transfer pricing information TPR-C the time limit for filing of which expired in August 2022 with the Head of the National Revenue Administration
- ✓ filing (electronically) of the declaration on preparation of the local file the time limit for filing of which expired in August 2022 with the tax office



## CALENDAR



- ✓ payment of the lump-sum income tax collected in November 2022 on dividend income and other income on share in profits of legal persons, and delivery of CIT-7 information to the taxpayers
- ✓ payment of the lump-sum tax on income originated in November 2022 by the acquiring company
- ✓ filing of the declaration of income on unrealised profits (PIT-NZ and PIT-NZS) for November 2022
- ✓ filing of the declaration of income on unrealised profits CIT-NZ for November 2022 and payment of the due tax disclosed in that declaration



- ✓ filing of the INTRASTAT notification for November 2022





- ✓ payment of ZUS contributions for November 2022 - payers of contributions having legal personality
- ✓ payment of contributions for PPK



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## CALENDAR



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