JUNE 2020

Ideas for Changes and Improvements in Polish Law

Over the last decade Poland has been growing very dynamically. Thanks to that many international companies have developed their business here, and recognizable brands willingly use the outsourcing services of the best providers from our country, including Sii Poland.

Well-structured, clear and stable law and reasonable taxes and social contributions will encourage more companies like Sii to invest in Poland and create new jobs here. However the new legislation imposes a growing number of obligations on enterprises, which leads to an increase in labor costs.

This translates into Poland's loss of competitiveness in terms of investment to the advantage of other European and Asian countries. As a company present on the Polish market since 2006 we see room for improvement, thanks to which other organizations will be still willing to invest capital in our country.

TABLE OF CONTENTS

1. Uncertain Economic and Political Situation

Carefully planning expenses and estimating revenue is key to dynamically developing companies. The fact that decisions, often resulting in costs amounting to millions of euros, are often unexpected and made at the last moment, is a great difficulty for us and many other companies. We do not know what decisions will be made in the coming weeks, months and years and what effects they will have on our company.

The Act on Employee Capital Plans implemented suddenly and in a hurry or an additional public holiday declared in November 2018, less than a week before the actual date, are just two examples of changes planned and introduced in such a manner. One of the latest examples is the situation related to the abolishment of the so-called thirty-fold limit on the payment of ZUS contributions (ZUS). In mid-November 2019, it was still unknown whether the change, generating huge costs for many companies, would be implemented in January 2020.

Because of such situations, it is very difficult, or often even impossible, to make decisions about next investments. In addition, both tense atmosphere and uncertainty have a negative impact on managing the company.

Poland's competitiveness is also an important issue. Every day we compete with companies from all around the world for projects and contracts. When it comes to winning, it is not only the quality of the provided services that matters. The labor costs we bear in Poland as a result of the legislative changes, effect in investors choosing companies from countries, where the conditions are more favourable.

We propose that **all changes be implemented at least one year in advance, giving enterprises time to prepare and adapt to them**. In addition, in order for Polish companies to remain competitive against global rivals, we propose that **the amount of taxes and social contributions, including ZUS and PPK, remains unchanged**.

2. Act on **Employee Capital Plans (PPK)**

In July 2019, the Act on Employee Capital Plans came into force. Companies employing over 250 people are required to implement PPK. It was created as a long-term saving system that will improve the financial safety of Poles.

The Act on Employee Capital Plans (PPK) brings an increase in labor costs (PPK contributions and administrative costs). Basic PPK contributions amount to 2% of the gross remuneration on the employee's side and a minimum of 1.5% on the employer's side.

The draft Act on Employee Capital Plans includes an evaluation of the impact of the regulations on the amount of future retirement pensions. However, the assessment of the costs that enterprises will have to bear is not included. These costs will be significant, especially in the case of companies with labor costs constituting a large share in total costs. The existence of obligations related to PPK may reduce the competitiveness of Polish companies on the international market. It is likely that this slows down economic growth. Therefore, we postulate **the removal of burdens on employers related to PPK.**

3. Tax Ordinance

Tax regulations pose a lot of problems for taxpayers, being too complicated or open to interpretation. As a result of the great complexity of legal regulations, their application raises many doubts and is associated with the need for paid expert consultations, and often also for individual tax ruling.

The current tax ordinance was adopted on August 29, 1997. Despite being amended several times in the meantime, it sometimes is unsuited to the changing situation. Later in this document, we will present areas that require modification.

› Lack of Possibility to Include PFRON Contributions in Tax Costs

Some enterprises are obliged to pay contributions to the State Fund for the Rehabilitation of the Disabled. The obligation to pay PFRON contributions is set forth in the Act of August 27, 1997 on vocational and social rehabilitation and employment of persons with disabilities.

Unfortunately, although such contributions are mandatory, they are explicitly excluded from tax deductible costs. From the taxpayer's perspective, such contributions are treated on equal terms with other contributions, for example to ZUS, and therefore, in our opinion, **they should be treated as tax deductible costs**.

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› Obligation to Have a Cash Register

As a rule, pursuant to article 111 of the Act on VAT, sales must be registered by enterprises selling goods or services to natural persons not engaged in business activity using a cash register.

In our opinion, recording transactions using a cash register is justifiable only in the case of cash transactions. However, taking into account the provisions, we have an obligation to register all transactions with natural persons not engaged in business activity, even when we settle by bank transfers.

We suggest **releasing companies that do not use cash settlements from the obligation to register transactions using a cash register.**

› Lack of Possibility to Deduct the Cost of Catering Services from Tax and to Treat it as a Tax Cost

Pursuant to article 88, section 1 of the Act on VAT, it is not possible to reduce the amount of or refund the tax due for the accommodation and catering services purchased by the taxpayer.

In the light of the applicable regulations, the taxpayer is not entitled to deduct the input tax on the purchase of alcohol consumed during business meetings or integration meetings as according to the legislator, the requirements referred to in article 86, section 1 of the Act on VAT, i.e. "there will be no connection with the performance of activities subject to VAT", will not be complied with.

Also, the lack of possibility to deduct VAT on catering services and treating them as a tax cost is a solution unfavorable for local micro-enterprises running restaurants and hotels.

We suggest that it should be possible **to deduct VAT on catering services, including the purchase of alcohol, in the case of business meetings.** A meal (lunch, dinner) with a client and ordering a small amount of alcohol is the norm in the business world.

› Tax Residency Certificate

Pursuant to article 4a, paragraph 12 of the CIT Act and article 5a, point 21 of the PIT Act, the tax residency certificate should be understood as a certificate of the headquarters or the place of residence of the taxpayer.

A taxpayer, for example a company, is obliged to collect withholding tax when paying foreign providers for services, such as internet access, marketing or IT. However, if the taxpayer has the Tax Residency Certificate of the provider, he most often does not have to deduct such tax. The problem is that in most cases only the original of such certificate is acceptable, with few countries being an exception to this rule, such as France and Ireland.

In our opinion the lack of possibility to use the electronic version of the certificate with all payments, regardless of the amount or the residency of the provider, creates difficulties for enterprises because clients often are not aware of this rule and do not want to provide original documents.

We propose that **the Polish payer could use an electronic version of the tax residency certificate regardless of the amount due paid or at least to the amount not exceeding PLN 2 million**.

› Lack of Practical Possibility to Treat Cash Register Receipts as Accounting Documents

In specific situations a receipt may constitute accounting evidence, for example a receipt for highway toll. The problems appear because such a document, for example a receipt for a taxi ride, has to be dated and contain taxpayer identification data. In addition, it must specify the quantity, unit price, and purchase value. Another taxpayer's obligation is to list his or her name (company name), residence address (registered office), and product type (name) on the receipt.

In practice, such a number of requirements imposed on the taxpayer excludes the possibility of using receipts and treating them as accounting evidence. In our view, the provisions regulating the issue of fiscal receipts should be more liberal, thus facilitating business activities.

Therefore, we suggest **adopting a more flexible approach to the requirements for receipts if their value is low** (e.g. below PLN 200).

› Car Lease Cost

Article 16, paragraph 1, point 51 of the CIT Act indicates that 25% of expenses incurred for the use of a passenger car not only for business activity (mixed use) are not considered as tax deductible costs. These expenses also include input VAT (article 16, paragraph 5a of the CIT Act).

In our opinion, the amendments to the Act introduced in 2018 are very unfavorable for companies, limiting the amount of tax costs on account of the operation of cars that are related to their business activity.

That is why, we suggest **lifting the 25% tax deductible cost limit.**

› Double Income Tax — First PIT and Then CIT

Although the company paying a dividend pays income tax, in the event of dividend payment a shareholder being a natural person is obliged to pay a lump-sum income tax. Since this tax is a lump-sum tax, it is not possible to include tax deductible costs. On the other hand, another company (legal entity) that is a shareholder is exempt from income tax (after meeting certain conditions).

Therefore, we propose **making the rules for natural persons and legal persons uniform and exempting both entities from income tax** after meeting certain conditions, e.g. if the natural person is an employee of a company and a tax resident in the country in which the company employs him or her.

› Obligation to Disclose Tax Schemes

In the Tax Ordinance (Journal of Laws of 2018, item 800, as amended), on January 1, 2019, changes regarding the mandatory disclosure of tax schemes were introduced (article 86a–86o of the aforementioned Act). Penalties for not performing this obligation may amount even to PLN 2 million.


SEBASTIAN, DELIVERY MANAGER

The complex nature of the procedure for disclosing tax schemes and unclear provisions open to interpretation are just some of the problems related to the reporting obligation. The regulations have been in force since the beginning of 2019 and still raise many doubts, as evidenced by multi-page annotations published regularly by the Ministry of Finance.

In practice, the regulations imposed an obligation to provide the National Tax Administration with information on tax patterns by specifying how they would use tax reliefs or preferences on companies. Knowing that companies obey the law and share this type of information in their tax return, it is worth asking a question about the legitimacy of the provision above.

Therefore, we suggest adopting a more flexible approach to the obligation to disclose tax schemes. We believe that as part of the liberalization of bureaucratic requirements, the taxpayer's obligations should be simplified as much as possible. We propose treating **PLN 1 million as the minimum amount for which the tax scheme should be disclosed.** Also, we postulate that **the taxpayer is released from the obligation to report when he or she applied for and obtained an individual tax ruling**. That being the case, tax authorities already have information on the taxpayer's activities related to taxation.

As a company present on the Polish market since 2006, we see room for improvement, thanks to which other organizations will be still willing to invest capital in our country.

4. Labor Law

› No Clear Definition of Business Trip and Secondment

When commissioning the employee to work in a place other than the one indicated in the employment contract, the employer must determine whether the work will be carried out as part of a business trip or a secondment. At present, the Polish Labor Code does not explicitly state in what situation the employee's going outside the permanent place of work is a business trip and when a secondment.

Polish enterprises encounter difficulties in connection with unclear regulations regarding the organization of business trips and the method of taxing the income of an employee, which is different for a business trip and different for a secondment.

In this case, we suggest **establishing explicit criteria as to how to distinguish a business trip from a secondment** (e.g. by determining the maximum duration of such trips).

› The possibility to sign documents online - civil law and the Act on copyrights and related rights

Lack of possibility to conclude contracts quickly and efficiently (paperless)
In the case of, among others:

- agreements transferring copyrights (both with clients and i.e. with freelancers)
- employment contracts

polish law imposes an obligation to conclude a contract in written form under pain of nullity.

Especially during the coronavirus pandemic, when the majority of people were working remotely, signing the document by both parties of the contract in handwritten form causes difficulties and complications. Although there are tools and applications on the market that enable the easy and quick conclusion of a contract without the need to use the written form (e.g. DocuSign, AdobeSign), Polish law in many cases does not allow such possibility.

An additional difficulty for entrepreneurs is the legal requirement for both parties to have a qualified electronic signature, which is practically non-existent in business transactions. Moreover acquiring it is complicated and costly, which successfully discourages private individuals (e.g. potential employees), microentrepreneurs, and contractors to use this solution.

In connection with the above, we postulate t**he removal of the requirement for both parties to have a qualified electronic signature** and to amend the Act on copyrights and related rights, i.e. by **removing the requirement to conclude agreements transferring copyrights exclusively in writing**.

5. EU Law

› Contradictory Rules for Posting Employees to EU Countries

At present, EU Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996, setting out general principles for the posting of employees to EU countries by enterprises, applies. One of the basic assumptions of the document was to establish universal, clear rules for all EU Member States. Unfortunately, each of them has developed their own rules, often contrary to the above directive.

For enterprises, non-complying with the established standards by particular Member States means the obligation to adapt to differing, local administrative and tax regulations.

› **Exit Tax**

In connection with the EU Anti-Tax Avoidance Directive (ATAD), concerning income from unrealized gains, changes were introduced in Polish acts, including PIT (articles 30da–30di) and CIT (articles 24f–24l).

In accordance with its provisions, unrealized gains are subject to taxation (exit tax) when the taxpayer's assets, including those tied up in foreign establishment, are transferred to another country or the taxpayer's residence is changed. This applies to cases in which the country of the taxpayer's current residence or the place of their business operation (i.e. Poland) loses right to tax income actually generated during the period in which a given property (including assets) was subject to tax legislation of that country.

PIT taxpayers do not tax income from unrealized gains if the total market value of the transferred assets does not exceed PLN 4 million.

In our opinion, the implemented changes are quite restrictive and discourage investing in Poland. Typically natural persons and enterprises do not suddenly leave the country with all their assets. On the other hand, they can, for example, make a decision to develop their business outside Poland. In addition, in the case of natural persons, the changes may be seen as a violation of provisions on free movement of persons.

We propose that **the regulations be liberalized in accordance with EU guidelines.**

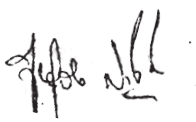
6. Commercial Companies Law

› **S24 System**

The S24 system was designed to enable online company registration within 24 hours. Unfortunately, at present, the registration process (also when all documents are completed correctly) takes up to several weeks. This is often due to the high number of cases to be considered by the court responsible for registering the company.

Now enterprises can register a limited liability company using the online form in the S24 system, at the same time being able to change any information about the registered company. However, if a mistake is made during the process, it cannot be undone or corrected. Errors can only be corrected in a traditional, time-consuming way.

Therefore, we call for **the possibility of modifying the data entered directly through the S24 system and improvement of the company registration process itself.**



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Who **We Are**

2006 establishment

200+ clients

4 000+ Sii Power People

PLN 678 m revenue (for 2018)

Sii **Financial Summary**

Year	taxes paid in Poland					Revenue	Net Profit	Dividend	Profit Reinvested in Poland
	VAT	CIT	PIT	ZUS	Total Tax				
2018	39,5	15,5	21,7	63,7	140,4	678	73,5	18,4	55,1
2017	39	12,6	16,6	55,4	123,6	512	49,9	0	49,9
2016	37,3	9,9	14,1	43	104,3	390	39,6	9,9	29,7
2015	31,9	6,5	10,4	33,6	82,4	304	25,5	0	25,5
2014	23,5	5,2	9,3	30,8	68,8	234	20,1	0	20,1
TOTAL since 2006	242	65	93	298	698	2 646	268	37	231