

## POLISH ANTI-CRISIS SHIELD



### LABOUR LAW

#### ■ **exemption from ZUS contributions**

An exemption from the obligation to pay social security (ZUS) contributions applicable to: (i) employers with up to 9 employees and (ii) sole traders (self-employed) whose ZUS contributions cover solely their own social security or health insurance for the period from 1 March 2020 to 31 May 2020.

Shield 2.0 has extended the group of entrepreneurs eligible for the 3-month exemption from social security (ZUS) contributions payable for the period from 1 March 2020 to 31 May 2020 by adding payers which had from 10 to 49 employees registered for the purposes of social security as at 29 February 2020. The exemption covers 50% of the aggregate amount of unpaid contributions reported in the social security statement filed for the relevant month.

The exemption constitutes State aid aimed at remedying serious disturbances in the economy referred to in the Commission Communication - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I/01). It enables entrepreneurs to apply for State aid on those grounds up to the maximum amount of EUR 800,000.

#### ■ **[NEW – Shield 3.0] ZUS contributions**

The extension of the group of entrepreneurs eligible for the exemption from ZUS contributions by including the beneficiaries of the so-called for-starters exemption/break, operating their business prior to 1 April 2020. The ZUS contribution payers will be able to benefit from the exemption from ZUS contributions due for April and May 2020 if the revenue generated in the first month for which the application is being submitted was not higher than 300% of the forecast average monthly gross salary in the economy in 2020 (currently approx. PLN 15,500). The exemption application may also be submitted if the revenues generated in the month for which the application is being submitted exceeded 300% of the average gross salary but the income in that month was not higher than PLN 7,000.

Shield 3.0 has modified the rules for applying for the exemption from ZUS contributions by sole traders

Below is a summary of selected measures available under Shield 1.0, Shield 2.0, and Shield 3.0 relief packages that you may find significant for your business.

(self-employed) whose ZUS contributions cover solely their own social security or health insurance. Following the amendment, the exemption is also available if the revenues generated in the first month for which the application is being submitted was higher than 300% of the forecast average gross remuneration in 2020 but the income was not higher than PLN 7,000.

#### ■ **reduced working time**

If the employer's turnover drops by at least 15%, the employer (having concluded an agreement with the trade unions or employee representatives) is entitled to reduce the employee's working time by up to 20% but no more than to 0.5 full-time equivalent. The wages/salaries of the employees affected by the working time reduction are eligible for a subsidy provided by the Guaranteed Employee Benefits Fund (GEBF) of up to one half of the wages/salary, providing that the subsidy does not exceed 40% of the average monthly salary for the previous quarter as published by the President of the Central Statistical Office. The employees whose pay in the month preceding submission of the subsidy application was higher than 300% of the average monthly salary for the previous quarter as published by the President of the Central Statistical Office, effective on the application submission date, are not eligible for the subsidy. Shield 2.0 has imposed the requirement to keep the subsidised employees employed solely over the period for which the GEBF subsidy has been received (i.e. up to 3 months).

#### ■ **time of work**

Loosening up of the rules for establishing the system or distribution of working time and daily and weekly rest periods for certain employers, upon conclusion of an agreement with the trade unions or employee representatives. Additionally, the parties may conclude an agreement for use of terms of employment that are less advantageous than as stipulated under the employee's employment contract.

- **loans to microentrepreneurs**

Shield 2.0 has extended the group of microentrepreneurs eligible for a loan by adding entities with no employees, having scrapped the requirement for the microentrepreneur to maintain the headcount of 29 February 2020; to qualify for loan forgiveness, the microentrepreneur is required to continue its operations for a period of 3 months after the date on which the loan is granted.

**[NEW – Shield 3.0]** The microentrepreneurs who had launched their business prior to 1 April 2020 are eligible to apply for the one-off loan (previously the business had to be launched prior to 1 March 2020).

- **downtime relief payment**

Upon conclusion of an agreement with the trade unions or employee representatives, the employer is entitled to reduce the wages/salaries of employees affected by economic downtime. The wages/salaries may be reduced by up to 50% but may not be lower than the minimum wage, taking into account the working time. The downtime relief payment may be subsidised by the Guaranteed Employee Benefits Fund (GEBF) up to 50% of the minimum wage taking into account the working time. The employees whose pay in the month preceding submission of the subsidy application was higher than 300% of the average monthly salary for the previous quarter as published by the President of the Central Statistical Office, effective on the application submission date are not eligible for the subsidy.

Shield 2.0 has imposed the requirement to keep the subsidised employees employed solely over the period for which the GEBF subsidy has been received (i.e. up to 3 months).

- **downtime relief payment**

Under Shield 2.0 entrepreneurs and contract workers are eligible to apply three times for a downtime relief payment. The downtime relief payment can be reapplied for no earlier than in the month following the month in which it was received for the first time, providing that the applicant's statement confirms that their financial standing has seen no improvement; contract workers (engaged under service contracts) may apply for a downtime relief payment if their service contract had been concluded prior to 1 April 2020 (before the amendment, it had to have been concluded prior to 1 February 2020). Further, Shield 2.0 has scrapped the revenue-based eligibility cut-off point (previously set at 300% of the of the average monthly salary for the previous quarter as published by the President of the Central Statistical Office) that enables sole traders (self-employed) and those who suspended their business operations after 31 January 2020 to apply for downtime relief. The revenue-base eligibility cut-off point has been retained for contract workers applying for a downtime relief payment.

- **[NEW – Shield 3.0]** The downtime relief payment is also available to those who launched their business prior to 1 April 2020 (previously the requirement was to have operated the business prior to 1 February 2020).

- **county CEO assistance**

Shield 2.0 provides for an option to apply for financial relief to the Labour Fund (assistance from county CEO to micro, small, and medium-sized enterprises as well as self-employed individuals operating as sole traders who have no employees) starting from the month in which the application has been filed (prior to the amendment the subsidy had been granted from the day of the application); the entities that avail themselves of the Labour-Fund relief are required to keep the subsidised employees employed (in the case of sole traders with no employees, the requirement is to continue their business operations) solely over the period in which the subsidy is received.

- **Sunday trading ban**

Loosening up of the ban on performing certain tasks associated with retail trading on Sundays to the extent of unloading, receiving, and displaying necessities.

- **suspension of periodic medical check-ups**

Suspension of the obligation to undergo periodic medical check-ups requested by the employer as the state of epidemic threat or the state of epidemic continue.

- **extended validity of medical check-ups**

The medical certificates issued as part of the preliminary, periodic, and follow-up medical check-ups expiring after 7 March 2020 continue to be valid but no longer than until the expiry of 60 days from the lifting of the state of epidemic threat or the state of epidemic.

- **[NEW – Shield 3.0] labour code**

Increasing the amounts free from deductions for employees who, as a result of the COVID-19 outbreak, have had their pay reduced or whose family member has lost their source of income. Amounts free from deductions have been increased by 25% for each family member who does not earn any income and who is dependent on the employee.

- **[NEW – Shield 3.0] employment of foreigners**

The terms and conditions of work performed by a foreigner can be amended without the need to amend the work permit, obtain a new permit, or enter a new statement on entrusting work to a foreigner in the statement register.

- **[NEW – Shield 3.0] foreigner's right of residence**

The validity of residence cards of an EU family member, documents evidencing the right of permanent residence, and permanent residence cards of an EU citizen's family, whose validity expired during the state of epidemic threat, has been extended. The above documents will remain valid over a period of 30 days from the date on which the state of epidemic threat is lifted.



## TAXES

- **payment gridlock**

Accounts payable within the meaning of the provisions on the prevention of excessive delays that are not paid within 90 days are not included in the income constituting the basis for calculating the tax advance for individual tax periods falling in 2020 (if the revenues generated by the taxpayer in the relevant tax period are lower by at least 50% compared to the same period of the previous tax year).

- **accounting for a loss**

Allowing taxpayers who because of the COVID-19 outbreak incurred a loss in tax year 2020 and generated in that tax year revenues at least 50% lower than the revenues generated on the same operations in tax year 2019 a one-off reduction of the income generated in 2019 by that loss (up to the maximum amount of PLN 5,000,000).

- **tax revenues**

Revenues on account of the exempt social security (ZUS) contributions are not considered revenues either within the meaning of the provisions on personal income tax or the provisions on corporate income tax. By the same token, the proceeds of a forgiven relief loan do not qualify as revenues, either.

- **treatment of tax relief**

COVID-19-related tax relief available under the provisions of the Tax Ordinance constitutes State aid aimed at remedying serious disturbances in the economy referred to in the Commission Communication - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I/01). It enables entrepreneurs to apply for State aid up to the maximum amount of EUR 800,000 (against the current EUR 200,000).

- **tax advances**

Deferment until 1 June 2020 of the deadline for effecting advance payments on account of income tax on wages and salaries paid to employees for March and April 2020.

- **[NEW – Shield 3.0] permissible delay in submission of PIT and solidarity levy statements**

Filing a tax statement on the amount of income generated (incurred loss) in 2019 and payment of the related personal income tax, as well as submission of the solidarity levy statement and payment of the levy by 1 June 2020 (instead of the original deadline of 30 April 2020) will have no adverse fiscal legal consequences. No interest for late payment on PIT arrears for 2019, if paid by 1 June 2020. Such an arrangement has also been proposed for arrears in payment of the solidarity levy (relevant drafts are available on the governmental website).

- **deferred deadline for filing CIT statement**

The deadline for filing the statement on the amount of income generated (loss incurred) in 2019 and payment of corporate income tax due has been postponed until 31 May 2020.

- **tax rulings**

Extension of the deadline for rendering tax rulings to 6 months.

- **preferential tax deductibility of anti-epidemic donations**

Preferential tax deductibility of COVID-19 anti-epidemic donations: 200% (donations made by 30 April), 150% (donations made in May), or 100% (donations made from 1 June to 30 September).

- **electronic receipt**

Fiscal receipts can be issued in electronic form instead of the traditional paper form upon agreement (with the consent of and in the manner agreed with the buyer).

- **VAT matrix**

The effective date of the VAT matrix postponed until 1 July 2020.

- **extension fee**

No extension fee if the taxpayer's request for deferment of tax or for payment of tax in instalments is granted.

- **tax capital groups**

Tax capital groups that in 2020 suffer adverse economic effects of the COVID-19 outbreak and for that reason fail to meet the profitability and no-tax-arrears condition retain the status of a tax capital group.

- **transfer pricing documentation**

The deadlines for drawing up the local and group transfer pricing documentation have been postponed until 30 September 2020 and 31 December 2020, respectively.

- **[NEW – Shield 3.0] tax on VOD platforms**

The companies offering on-demand audiovisual services (that is streaming platform providers) are required to pay quarterly to the Polish Film Institute a 1.5% fee on: (i) revenues from fees for access to the on-demand content offered to the public, or (ii) revenues from commercials if higher in the relevant quarter. The VOD fee will also be imposed on entities from other EU Member States operating streaming platforms with content on demand. However, such foreign entities are to pay their VOD fee based on the revenues generated in Poland only. The VOD fee will be treated on a par with tax obligations (default interest, potential credit, limitation periods). The VOD fee will be tax deductible on the date it is incurred.

- **[NEW – Shield 3.0] unfreezing periods**

The periods of tax proceedings and audits, as well as customs and tax audits that did not commence or were suspended under the provisions of Shield 1.0 are to commence or restart, respectively, after 7 days from the effective date of Shield 3.0.

- **[NEW – Shield 3.0] no-arrears certificates**

When issuing certificates on no arrears in payment of taxes or confirming the status of arrears issued pursuant to Article 306e of the Tax Ordinance, with respect to the default interest waiver period, the arrears on which no interest was charged are not included. However, the provision does not apply to certificates issued to buyers of an enterprise or an organised part of an enterprise, which may include arrears on which default interest was waived. The existence of arrears on which interest was waived does not affect eligibility for financial support available under government programmes, where one of the eligibility conditions is the absence of tax arrears.

- **[NEW – Shield 3.0] benefits received by farmers exempt from personal income tax**

Exemption of farmers and their household members from personal income tax on benefits received in the event of being quarantined, subjected to epidemiological supervision, or hospitalised in connection with COVID-19.



## BANK LOANS

- **amending terms of loan/credit facilities**

The conditions for repayment of credit/loan facilities granted prior to 8 March 2020 can be amended without the need for a full credit rating assessment. Shield 2.0: expanded to include all entrepreneurs.

- **financial assistance from BGK**

Sureties and guarantees for repayment of loan/credit facilities contracted by entrepreneurs are available from Bank Gospodarstwa Krajowego, excluding microentrepreneurs and small entrepreneurs, to support financial liquidity. The surety or guarantee may cover up to 80% of the outstanding loan/credit facility amount covered by the surety or guarantee. BGK has announced that the guarantees will be granted for a period of up to 27 months (and no longer than the loan/credit repayment period + 3 months) for new or renewed after 1 March 2020 overdraft facilities and credit lines intended to provide financial liquidity (with the maximum loan/credit amount of PLN 250 million). The guarantees will be available to companies that were not ailing as at 31 December 2019 and had no arrears with the Tax Office, Social Security Institution (ZUS/KRUS), or with the lending bank (in the case of bank debt in excess of PLN 3,000) as at 1 February 2020. The entrepreneurs can apply for the guarantees to the lending banks, both commercial and cooperative, that have concluded a relevant cooperation agreements with BGK. The surety or guarantee may constitute State aid.

- **UKNF credit rating communication**

Facilitating extension or increase of financing (up to 1 year) granted prior to 31 December 2019 in the event of a temporary threat of liquidity loss and preferential treatment of borrowers covered by BGK guarantees up to 80% of the loan/credit facility amount, including with regard to new lending - in accordance with the [Communication of the Office of the Financial Supervision Authority \(UNKE\) of 31 March 2020](#) and the [Communication of the Polish Bank Association \(ZBP\) no. 2 on assistance measures](#). Further, pursuant to the [Communication of UKNF of 9 April 2020](#), micro, small, and medium-sized entrepreneurs that are not eligible for the assistance under the Shield due to the lack of credit rating assessment after 30 September 2019 but have a healthy business track record can also expect to be given more liberal treatment by the banks.

- **financial assistance from PFR**

The new tasks of the Polish Development Fund (PFR) comprising State aid by way of financing extended among others to prevent or remedy damage caused by natural

disasters, other crises, including the spread of COVID-19 by (a) acquiring or purchasing shares, subscription warrants, bonds, receivables, and acceding to partnerships; and (b) granting loans, guarantees, and sureties. The PFR programme for micro, small and medium entrepreneurs has been already launched, whereas the support program for large entrepreneurs is awaiting the approval of the European Commission. In order to implement the government programme of financial assistance to entrepreneurs, PFR may among others source data, free of charge, from personal data filing systems maintained by public authorities and state organisational units. PFR verifies the need for further processing of personal data at least annually.

- **financial assistance from IDA**

IDA has become an organisation that, either alone or through a subsidiary, is to provide assistance by offering to ailing entrepreneurs (drop in the entrepreneur's turnover as a result of COVID-19 of 15% over two consecutive months year-to-year or 25% month-to-month) on market conditions financial instruments of repayable assistance provided by IDA to entrepreneurs, including without limitation loans, guarantees, sureties, and other instruments financing business activity (including leasing) in order to provide the beneficiary with financial liquidity as the state of epidemic threat or the state of epidemic continues and for a period of 12 months following the lifting of that state, until the adverse economic effects for entrepreneurs subside.

- **exclusion of certain funds from enforcement**

The proceeds of the financial assistance granted to entrepreneurs by PFR as part of the government programme are not subject to court or administrative enforcement, unless the receivables under enforcement have arisen by breach of the terms and conditions under which such assistance was granted to the entrepreneur.



## LEASES

- **expiry of liabilities (large retail facilities)**

As the ban on trading in retail facilities in excess of 2000 sq. m in selling space continues, liabilities of the parties to lease, tenancy, and other similar agreements expire (for details, see [Legal Alert of 31 March 2020](#)). Combined with the tenant's obligation to submit to the landlord upon expiry of the ban an unconditional offer to extend the term of the agreement on the same terms and conditions by the period of the ban plus another six months.

- **no termination or extension of leases in effect**

The current lease agreements cannot be terminated, and rents under them cannot be increased until 30 June 2020 (subject to the exceptions provided for under the statute).

Extension of lease agreements until 30 June 2020 on the basis of the tenant's statement (applies to lease agreements concluded before the effective date of the statute that would have expired prior to 30 June 2020).



## BUSINESS OPERATIONS

- **remote meetings of corporate bodies**

Management Boards and Supervisory Boards of companies can operate and shareholders can participate in meetings of shareholders (general meetings) of companies on a remote basis. There is a requirement to adopt regulations setting forth the procedure for remote attendance at meetings of shareholders (general meetings). The real-time transmission of proceedings of general meetings of public companies must be provided.

- **financial statements**

Postponement by 3 months (or by 2, depending on the entity) of the deadline for drawing up financial statements.

- **cooperatives, investment funds, and other entities – measures to facilitate operations**

The extension of remote-access proceedings to corporate bodies of cooperatives, cooperative banks, investment funds, foundations, associations, meetings of bondholders (in particular the ability to hold meetings of bondholders on a remote basis, ability to postpone deadlines for providing bondholders with financial statements).

- **UBO register**

Postponement of the deadline for submission of information to the Central Ultimate Beneficial Owner Register until 13 July 2020.

- **[NEW – Shield 3.0] share dematerialisation**

Postponement of the deadline for share dematerialisation from 1 January 2021 to 1 March 2021. The date of first call to shareholders to submit share certificates to the company is postponed from 30 June 2020 to 30 September 2020.



## BANKRUPTCY AND RESTRUCTURING LAW

- **suspension of the period for filing bankruptcy petition**

If the grounds for declaration of bankruptcy arise during the period of the state of epidemic threat or the state of epidemic, and insolvency results from the COVID-19 outbreak, then the period for filing the petition for bankruptcy does not commence, and if it has already commenced, it is suspended. Upon lifting of the state of epidemic, the period for filing the bankruptcy petition resumes. If the insolvency has arisen during the COVID-19 epidemic (after 14 March 2020), it is presumed to have been caused by COVID-19.

The time over which the period for filing for bankruptcy is suspended due to COVID-19 is added to the protection period when the acts of the entrepreneur may be deemed ineffective.

- **cases for opening restructuring proceedings deemed urgent**

Cases for opening restructuring proceedings have been listed among urgent matters. Consequently, restructuring courts may hear cases for opening of restructuring proceedings, including—should they find it necessary—holding a hearing.



## LEGAL PROCEEDINGS

- **[NEW – Shield 3.0] extension of the list of urgent cases**

The list of urgent cases heard by designated courts if the court having jurisdiction is closed due to COVID-19 has been additionally extended among others by:

- proceedings conducted after the opening of restructuring proceedings,
- proceedings for declaration of bankruptcy and conducted after declaration of bankruptcy.

Consequently, in practice the bankruptcy and restructuring courts should handle their cases on a regular basis.

- **[NEW – Shield 3.0] resumption of time limits**

Time limits in legal proceedings and substantive law deadlines arising under administrative law that did not commence as a result of entry into force of the Act of 31 March 2020 commence and those that were suspended resume after 7 days from the effective date of the Act of 14 May 2020.

Any procedures carried out during the suspension of the substantive law time limits remain in force. While there is no equivalent regulation regarding procedures completed during the suspension of time limits in legal proceedings, one should assume that these procedures also remain effective.

- **[NEW – Shield 3.0] special rules for conducting hearings**

During the state of epidemic threat or the state of epidemic declared due to COVID-19 and one year after they have been lifted, hearings are held remotely with simultaneous direct image and sound transmission.

- **[NEW – Shield 3.0] remote hearings before Voivodship Administrative Court and Supreme Administrative Court or closed hearings**

During the state of epidemic threat or the state of epidemic declared due to COVID-19 and one year after the last of them has been lifted, Voivodship Administrative Court and Supreme Administrative Court hold hearings using technical equipment enabling the hearings to be held remotely. Holding a hearing with physical attendance of the parties in the courtroom is to be possible unless it poses an excessive threat to the health of the attendees. The chairman, both in the proceedings before VAC and SAC, may order a closed session, if he or she deems it necessary for the hearing to take place and holding the hearing required under the statute could pose an excessive threat to the health of the attendees, and it cannot be held remotely.



## OTHER CHANGES

- **[NEW – Shield 3.0] ban on security transfer of residential properties**

The agreements concluded by natural persons outside of the banking system obliging to transfer given person's residential property in order to secure contractual claims not related to that person's business or professional activity are deemed invalid.
- **maximum prices and margins**

Introducing the ability to set, by way of a notice of the Minister of Health, maximum official selling prices, official wholesale and retail margins for medicinal products, medicinal devices, foodstuffs for particular nutritional uses and biocidal products.
- **restricted application of assistance**

The assistance provided may not be applied to discharge the beneficiary's liabilities to its parent and subsidiary entities, partners, shareholders, family members, and next of kin.
- **no requirement to procure occupancy permit**

As the epidemic and the state of epidemic lasts, the requirement to procure occupancy permits has been scrapped; it is now sufficient to submit a construction completion notice to which no objection is made by the building supervision authority within 14 days. In practice, the amendment may turn out not to be enough, since the administrative deadlines have already been suspended, including the deadlines for disposal of the matter without notice by the authority. At the same time, no provisions simplifying the acceptance of building structures by the fire department and sanitary inspection have been enacted, which may prevent reaping the benefits of the statute as far as procuring occupancy permits goes.
- **location data processing**

The minister in charge of computerisation may request from operators: (i) data on the location of the telecommunications terminal equipment of a person suffering from COVID-19 or quarantined for the last 14 days; (ii) anonymised location data of the end-user terminal equipment. The information will be sourced in connection with counteracting COVID-19 during the state of epidemic threat, state of epidemic, or state of emergency due to natural disaster, and in the manner and form determined by the minister in charge of computerisation. The end user's consent to the above is not required.
- **anonymisation of location data beyond secrecy of communications**

Anonymisation of location data that goes beyond the data necessary for the transmission of a message or for the operator to issue an invoice is not considered to be processing of data covered by the secrecy of communications if it is carried out during the state of epidemic threat, state of epidemic, or state of emergency due to natural disaster in order to counteract COVID-19.
- **authority of the postal operator with regard to personal data**

The postal operator obligated to provide universal services receives, to the extent necessary for the organisation of the election of the President of the Republic of Poland or for the purpose of fulfilling other responsibilities imposed by the postal administration authorities, data from the PESEL register or another list or register at the disposal of a public administration body.
- **sharing data of the insured**

Given the need to fulfil certain assistance responsibilities relating to the prevention, counteracting, and eradication of COVID-19 and the effects of the epidemic caused by it, data collected in the account of an insured person recording information on the indexed amount of contributions for retirement insurance and data recorded in the account of a contribution payer (e.g. settlement of due contributions) may be shared free of charge with the Prime Minister, Head of the Chancellery of the Prime Minister, or a plenipotentiary of the Prime Minister in charge of analyses and studies of the key public policies. The data may also be shared with the Industrial Development Agency (IDA; ARP) and the Polish Development Fund (PFR) for purposes relating to the implementation of assistance responsibilities with regard to prevention or combating the economic or business effects of the COVID-19 epidemic.

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