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analyzes

Long-awaited, favorable changes are coming in the area of Whitelist

The president has signed the bill

Tax alert (13/2020) June 17, 2020

Yesterday, the President signed the Act of June 5, 2020 amending the Act on personal income tax, the Act on corporate income tax, the Act on flat-rate income tax on certain revenues generated by natural persons and certain other acts. The Act primarily introduces numerous and, which is worth emphasizing, positive

on certain revenues generated by natural persons and certain other acts. The Act primarily introduces numerous and, which is worth emphasizing, positive changes for taxpayers in the area of so-called Whitelist. The government draft of this bill was sent to the Sejm in February this year, however, due to the COVID-19 pandemic, its legislative process was significantly extended in time. The Act is awaiting its publication in the Journal of Laws.

The regulations introduced are a response to the expectations raised by entrepreneurs for whom the process associated with the daily service of the White List is currently an additional, significant administrative burden. After the provisions enter into force, it will be necessary to update and adapt the companies' procedures related to the White List to the new requirements - however, these changes should allow for greater automation of the process related to handling the White List requirements.

Beneficial changes from the taxpayer's perspective include a modification of the wording of Art. 12 paragraph 4j and 15d of the CIT Act, art. 14 paragraph 2i and art. 22p paragraph 4 of the PIT Act and art. 117ba of the Tax Code by introducing a catalog of situations in which there will be no obligation to increase tax revenue, a ban on including tax deductible costs or the risk of incurring joint and several liability in VAT in the case of payments made without the intermediation of a payment account or made on an account not included in the list of VAT payers. Pursuant to the amended provisions, the discussed negative consequences in income taxes and joint and several liability in VAT will not occur, inter alia, if the payment:

1. was made to an account other than on the list of VAT taxpayers and the taxpayer submitted an appropriate notification upon the first payment within 7 days from the date of ordering the transfer, or
2. was made by transfer to the bank's account or the account of the cooperative savings and credit union (SKOK):
 - a) used to make settlements on account of cash receivables purchased by that bank or SKOK (so-called assignment accounts) or
 - b) used by that bank or SKOK to collect receivables from the buyer of goods or service recipient for the delivery of goods or services, confirmed by an invoice, and transferring all or part of it to the supplier of goods or service provider (factoring), or
 - c) run by that bank or SKOK as part of its own economy, which is not a settlement account
 - if the bank, credit unions or the entity issuing the invoice, together with the information on the invoice number for payment, respectively, provided the taxpayer with information that the invoice indicated is a cession account used in factoring operations or as part of own economy, or
3. will be made in accordance with the split payment mechanism or
4. results from an invoice documenting activities related to intra-Community acquisition of goods, import of goods, import of services or delivery of goods settled by the buyer.

Extension of the deadline for submitting notifications

A good direction is the **extension of the deadline for submitting a notification of payment of the amount of the liability to an account outside the White List of VAT payers up to 7 days** provided for in the Act. Pursuant to the regulations in force to date, in the case of payment of receivables to an account not included in the White List, it was possible to classify expenses as tax deductible costs (in PIT and CIT) provided that the tax office was notified of such payment, however the deadline was more restrictive and was only 3 days from the day of the transfer order. At the same time, exceptionally during the COVID-19 epidemic, temporarily the period was extended to 14 days. In accordance with the provisions of the Act signed by the President, after the change this period has been **permanently extended to 7 days** giving taxpayers significantly more time than ever before.

Change in the body to which notifications are submitted

In addition, a positive change that significantly facilitates the process of submitting the above-mentioned taxpayers notifications are the fact that they will no longer have to be submitted to the tax office competent for the contractor, but **in their own tax office (i.e. the tax office competent for the buyer)**, which will simplify the current procedure resulting from the need to determine the supplier's tax office, which was not always easy, especially during a 3-day period.

Introducing one-off notifications

In addition, from July 2020 it will be possible to submit the abovementioned notifications **once on a specific bank account number** . If the buyer settles his liability by paying an amount to an account that is not included in the White List, he will have to make the notification only at the first transfer, and the once submitted notification will release him from the negative consequences in terms of tax deductible costs (in PIT and CIT) and joint and several liability in VAT. Consequently, if you pay again to this account (outside the White List), there will be no obligation to notify you again.

Payments on cession accounts

Exclusion of the application of sanctions in income taxes / joint and several liability in VAT in the case of payment to an assignment account, used in factoring or for own economy purposes, provided that the bank, credit union or invoice issuer provides the taxpayer with the data of the account to which payment should be made along with information that the given account is an assignment account, used in factoring or for own economy purposes. Failure to provide the above information may result in negative tax consequences, which in turn may result in the bank, credit union or invoice issuer liability for damages under separate regulations.

Extension of protection related to payment with the split payment mechanism (MPP)

If you make a payment **using the split payment mechanism, the abovementioned negative consequences in the scope of CIT and PIT / in the scope of joint and several liability in VAT even if it turns out that such payment was made to an account not included in the list of VAT taxpayers**. This solution was aimed at unifying regulations regarding the application of the list of VAT payers and the split payment mechanism. In practice, making a payment using MPP will be tantamount to no obligation to verify that the seller's account is on the VAT list. This may mean that taxpayers will more often than now decide to use the split payment mechanism. Negative income tax consequences will not apply to payments using the split payment mechanism from January 1, 2020.

No sanctions associated with the White List are applied to certain types of transactions

The Act also specifies that taxpayers paying for an invoice documenting activities related to intra-Community acquisition of goods, import of goods, import of services or delivery of goods settled by the buyer will not be obliged to examine whether the invoice indicated on such an invoice is included in the list of VAT taxpayers. According to the explanatory memorandum to the Act, the situation in which the supplier will have an account with a Polish bank due to the fact that it has been registered for other purposes or other transactions will also be irrelevant in such cases. The introduced regulations mean that when making payments for such invoices, taxpayers will not bear the risk of negative effects in CIT and PIT and in the form of joint and several liability in VAT.

The above changes apply to the payment of receivables in the tax year starting after December 31, 2019, as well as to costs included in tax deductible costs from January 1, 2020.

In addition to the changes described above, the Act also introduces clarifying changes, e.g. in determining income at the factor, or the use of preferential taxation of income from qualified intellectual property rights, and changes that will involve additional obligations for taxpayers.

Other changes

The Act signed by the President also introduces changes in other tax regulations. Among them, one should pay attention to the change regarding the content of art. 15cb of the CIT Act, which allows taxpayers to include in the tax deductible costs interest on subsidies retained in the company or the profit transferred to the company's reserve or supplementary capital - as an incentive to use financing from their own resources instead of external financing.

Under the amendment to the Act in art. 15cb, paragraph 10 has been added, which specifies that the right to include in the tax costs the hypothetical costs of obtaining external capital will not apply in a situation **where the indicated activities are carried out without economically justified reasons, but mainly or solely for the purpose of obtaining a tax benefit** .

In practice, the introduction of the above paragraph means that taxpayers who want to include in the tax deductible costs the cost of hypothetical interest will be required to present economic arguments for the activities carried out.

The Act does not define what should be considered a justified economic cause. Nevertheless, the introduced change falls within the context of other changes in tax regulations made in recent years, which imposed on taxpayers the obligation to **analyze in detail the reasons for the activities of taxpayers and their proper documentation for the purposes of possible inspections by tax authorities** .

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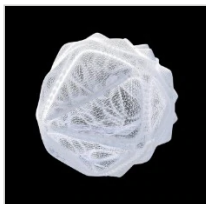
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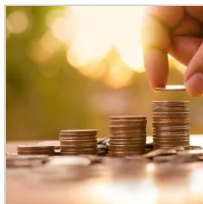
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