

June 2020

"Anti-Crisis Shield 4.0" published in the Journal of Laws

On 23 June 2020, the Act on subsidization of interest on bank loans granted to entities affected by COVID-19 and simplified arrangement approval proceedings due to COVID-19, commonly referred to as Anti-Crisis Shield 4.0 (hereinafter: "the Act" or "the Shield 4.0") was published in the Polish Journal of Laws.

The review of the key measures included therein can be found below.

Loan subsidies

The Act primarily lays down the rules of subsidization of interest on bank loans granted to companies affected by the COVID-19 pandemic.

The subsidies will apply to revolving and non-revolving working capital loans granted in PLN.

Subsidized loans may be applied for by entities:

- 1) whose businesses, as at 31 December 2019, were not considered to be "undertakings in difficulty", within the meaning of Commission Regulation (EU) No 651/2014;
- 2) who conduct business activity in Poland or suspended their business activity after 1 February 2020 due to the negative impacts of the COVID-19 spread;
- 3) who have not taken out any other loan provided for by Anti-Crisis Shield regulations;
- 4) who lost liquidity, understood as the company's capacity to meet its liabilities when they fall due, or are at risk of losing it as a result of the negative impacts of the COVID-19 spread.

Importantly, the subsidy shall be granted only if the company is not in arrears with the repayment of the loan principal and interest due to the bank, which is the difference between interest accrued at the interest rate charged and the amount of the subsidy.

The subsidy shall cover:

- 1) a portion of interest due to the bank, which in the case of:
 - a) micro, small and medium-sized businesses shall amount to 2 percentage points;
 - b) other types of businesses shall amount to 1 percentage point.
- 2) the total amount of interest due to the bank, where the interest rate on the subsidized loan does not exceed the above-indicated amounts.

The subsidies will constitute State aid to remedy a serious disturbance in the economy of a Member State, as stipulated by Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Furthermore, the subsidy shall not be recognized as the entity's revenue.

Simplified restructuring procedures

What is more, the Act puts forward a model of simplified restructuring procedures.

Companies willing to rebuild their financial stability will be granted a possibility to independently launch recovery proceedings without the need to apply to the court in this regard. This will be possible through

an announcement in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy) and with assistance of a restructuring advisor.

The launch of restructuring proceedings by the company will suspend the enforcement of creditors' obligations for a maximum of four months and for the time the court approves the arrangements made with creditors. During this period, it will be impossible for the creditors to terminate contracts material to the company's business, including real estate lease or rental agreements. The debtor must enter into a settlement with the creditors within the set deadline.

Once it falls, submission of an application for approval of the arrangement will be required.

If, at the time of deadline, the company still has not made an arrangement with the creditors, it will no longer be protected.

The simplified restructuring procedures can be applied only once.

The introduced provisions are temporary and shall apply until 30 June 2021.

Protection of strategic Polish companies

Importantly, the Act brings amendments to the Act on the Control of Certain Investments, by introducing measures preventing hostile takeovers of Polish companies.

Pursuant to the Act, potential investors with citizenship or registered office in a non-OECD country (formerly: outside EU/EEA)

will be required to notify the Polish Office of Competition and Consumer Protection of their intent to purchase a given company (or shares in it).

Failure to do so will result in a penalty of up to PLN 10 million.

The safeguard provisions shall extend to public limited companies, companies which are in control of critical infrastructure, companies dealing with software for water supply management, power plant control or operating hospital IT systems as well as entities involved in generation of electricity, production of gasoline and diesel fuels and many other businesses, whose revenues from sales or services in the territory of Poland in any of the two financial years preceding the notification exceeded EUR 10 million.

The decision on whether a given takeover was hostile will be made by the President of the Office, who will have three months to issue the decision authorizing the transaction.

The new solutions are to stay valid for 2 years.

Subsidization of salaries by GEBF

Additionally, the Act provides for some advantageous changes in the rules of subsidization of salaries by the Guaranteed Employee Benefits Fund (GEBF). Under the new provisions, companies may apply for the subsidy even when they do not experience economic downtime or reduced working time. A broad review of the salary subsidy-related changes was presented in the Tax Alert of 27 May 2020.

Other changes

Please note that the Act brings about a whole range of new significant measures, including:

- exemption from tax on revenues from commercial buildings for the period running from 1 March 2020 to 31 December 2020;

- postponing the entry into force of the new SAF-T_V7 until 1 October 2020;
- extension of deadline for submitting transfer pricing information returns;
- the possibility for the taxpayers affected by negative economic consequences of the COVID-19 pandemic to apply the bad-debt relief in the scope of deduction of debt for the period starting when 30 days have elapsed since the date of payment specified on the invoice (bill) or in the contract, up to the date on which the debt was settled or expensed (currently, the CIT and PIT acts settle it at 90 days from the specified date of payment). Note that the amendment applies solely to creditors;
- extended suspension of deadlines for reporting domestic tax arrangements to the 30th day after the date of recall of the state of epidemic or epidemic threat (in the case of cross-border arrangements the deadline suspension is to last no longer than until 30 June 2020);
- possibility to deduct contractual penalties and damages, provided that the defect in the goods delivered, works or services performed, a delay in the delivery of goods free of defects or a delay in the removal of defects in goods or works and services performed, was due the state of epidemic threat or the state of epidemic;
- possibility to use a tax residence certificate which does not include a validity date and for which the 12-month period expires during the state of epidemic or epidemic threat, or a copy thereof by a remitter for up to 2 months after the recall of the state

of epidemic or the state of epidemic threat;

- possibility of deducting in-kind donations like laptops and tablets (not older than 3 years) made from 1 January 2020 to 30 September 2020 to entities listed in the Act, e.g. bodies running educational establishments (under certain conditions, the deduction can be also applied to donations made through public benefit organizations);
- extension of the deadline for paying the annual perpetual usufruct fee for 2020 to 31 January 2021;
- amendments aimed at adjusting the New Investment Support Act (regulating the functioning of the Polish Investment Zone) to Commission Regulation (EU) No 651/2014, inter alia, through enabling the recognition of a new investment as a qualifying cost (under certain conditions) also after the investment completion date to include the time of further use of the investment, rent, lease or financial lease, which are usually spread over a longer period;
- limiting the amount of severance payments, damages and similar services provided for in the event of termination of the employment contract, mandate contract or due to the termination of exercising functions for pay, excluding agency agreements, to a 10-fold value of a minimum remuneration for work (currently: PLN 2,600 gross).

The Act entered into force on the day following its publication in the Journal of Laws, i.e. on 24 June 2020.

If you would like to learn more about the issue discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

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