

TURNING POINT

STRONG POINT

FIVE MINUTES TO BREXIT
- LET'S NOT BE SURPRISED

STARTING POINT

SAFE JOURNEY TOWARDS
INTELLIGENT AUTOMATION

STRATEGIC POINT

EMPLOYEE CAPITAL PLANS (PPK)
- INVESTMENT IN THE FUTURE

Nr 1 2019

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FIVE MINUTES TO BREXIT – LET’S NOT BE SURPRISED

Brexit poses a great challenge for companies, whose business model is based at least partially on cooperation with the British market. We talk with P. Kamil Rosiak, Attorney-at-Law at the law firm D. Dobkowski associated with KPMG in Poland, about the impact of Brexit on Polish companies.

Turning Point >: Recently there has been a lot of media reports related to Brexit negotiations. What will the business reality of Polish companies whose activities are connected with the British market look like?

PRZEMYSŁAW KAMIL ROSIAK (PKR):

The United Kingdom is in the third place as far as the export of products from Poland is concerned. It's the second economy in the European Union and simultaneously one of the leading financial centers in the world. No wonder Brexit evokes so much emotion. New situation will exert profound influence on Polish companies cooperating with The United Kingdom. All the scenarios are still possible at the time of this interview.

It is not sure if the exit of the UK from the European Union will happen in a way that is well-ordered (based on a negotiated Withdrawal Agreement), or without agreement (no deal scenario). The basic difference between the two scenarios is the very moment the new rules for conducting trade and providing services begin to apply. In the case of the orderly exit, by the end of 2020 (or even by the end of 2021 or 2022 if the option of one-time extension of the transition period is used) the current rules will have applied. However, a no deal scenario, in which the UK becomes a third party for the EU as early as the end of March 2019, poses a big danger for business.

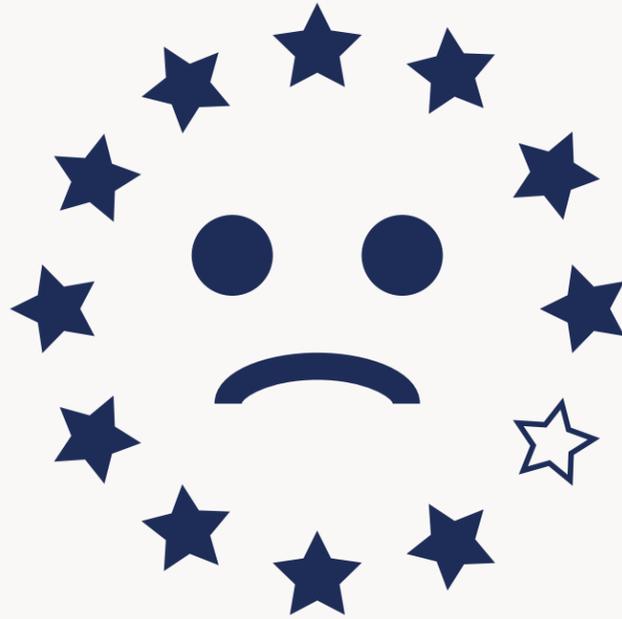
TP > What will the consequences of Brexit for business be like?

PKR > The biggest risk connected with Brexit is the unpredictability of its consequences. It is the uncertainty of what will happen even in a short time perspective that is the main characteristic of present times. Will there be import duties and expensive and time-consuming customs procedures? Will the EU type-approval certificates (also those issued in Poland) be honored in the United Kingdom? Will the regulatory discrepancies lead to obstacles in trade and provision of services? Will there be no restriction of access to qualified employees? These are only some of the many questions which we currently don't know the answers to. Meanwhile, conducting business requires proper organization and long-term planning which cannot be guaranteed overnight. One thing is sure though: regardless of the conditions of Brexit, the UK's relations with EU and its internal market will no longer be as unique and close as those enjoyed by "the elite EU club".

TP > How can the situation of companies trading with the UK change?

PKR > Under the EU law companies have different responsibilities depending on their place in the supply chain (e.g. producer, importer, wholesale distributor, etc.). If, after the UK leaves the European Union, an entrepreneur from a member state who purchases goods

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in the UK is considered to be an importer from a third country, the number of their duties will extend to both the EU and the UK. Another aspect that will be of significance to the exporters after Brexit, are the rules of origins of goods. When exporting goods to third countries with which the EU has concluded a Free Trade Agreement, exporters may use preferential duty rate, if their products are "sufficiently" EU-originated according to the rules of origin. After Brexit, the input of the UK will not be treated as the EU-originated input. Thus, it is worth investigating into supply chains and start perceiving the UK input as non-EU and still try meeting the conditions that ensure preferential duty rates, e.g. by changing the suppliers of raw materials or intermediate products from the UK into the EU ones.

It is therefore relevant for the imposition of duty or indirect tax whether the goods are moved within the EU, or to or from a third country. Trading with the UK after Brexit will become more complex due to the applicable customs and VAT procedures.

TP > What kind of changes should entrepreneurs prepare for?

PKR > Many examples can be given. In the area of health, safety and environment protection, EU regulations limit import and export of some goods (e.g. live animals, products of animal origin, parts of plants or plant products) to and from third countries. Import or export of some goods is subject to certain permits or applications. After Brexit these regulations will apply to goods destined for customers in the UK or imported from there. Therefore, necessary steps have to be taken to ensure compliance with EU import or exports bans and restrictions which did not constitute barrier to intra-EU trade.

After Brexit, the input of the UK will not be treated as the EU-originated input. Thus, it is worth investigating into supply chains and start perceiving the UK input as non-EU and still try meeting the conditions that ensure preferential duty rates, e.g. by changing the suppliers of raw materials or intermediate products from the UK into the EU ones.



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TP > And what about the issue of certification system recognition, e.g. for products imported from the UK to the EU.

PKR > In the case of business activity based on certificates, licenses of permits issued by the UK or institutions based in the UK – or granted to UK-based person – after Brexit these administrative documents may expire. It may be necessary to transfer such permits on the EU domiciled persons or apply to appropriate bodies based in the EU member states for the new ones. This concerns particularly certificates, licenses and permits issued for goods (e.g. in automotive or medical devices sector) and services (e.g. transportation, media or financial sector).

TP > Do you think Polish entrepreneurs are ready for Brexit?

PKR > From my observations, being aware that one should prepare for Brexit is much bigger on the British side than on the Polish side. The majority of Polish entrepreneurs believe they still have a lot of time to prepare for the upcoming changes because the risk of the UK leaving the EU without an agreement is very small. There exists a conviction that even if Brexit took place in March 2019, it would still be possible to prepare for it in a short time. However, organizing new logistics, obtaining permits, approvals and licenses to conduct business with the UK, will surely take a lot of time and will be expensive. That is why management boards of Polish companies trading with the UK and providing services there, should immediately take necessary measures.

TP > Thank you for the interview. ■



GLOBAL MOBILITY – LUXURY OR NECESSITY IN THE COMPANY?

Extremely dynamic times, progressive globalization, expansion of new technologies and increasingly intense contacts of Polish companies with foreign investors require Polish enterprises to react fast to current market, business and employee needs. A few years ago, despite existing differences, it was still common to confuse business travel with secondment, while the concept of Global Mobility was practically non-existent.



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Global Mobility counseling is becoming more and more popular thanks to current market situation and adapting Polish company structures to organizational patterns known abroad. It is not uncommon for companies to decide on creating separate positions in charge of coordination of business trips and delegations, which is safe and proper for both parties involved. What is a standard in Western countries, still appears to be a luxury in Poland.

Travel or delegation. How to start?

Companies whose employees sporadically go on business trips do not need to tackle Global Mobility issues due to a small scale of the problem. With the help of an advisor, HR and payroll departments will deal easily with three or four posted workers. Problems start to appear when the number of posted workers increases. A finance director or a person responsible for payroll will ask why is it so, if tax, social security contributions are paid continuously in Poland. True as it is, one should take into consideration that the mere fact of working under a Polish contract of employment does not mean that business trips or delegations abroad do not influence the issue of tax, social security contributions and labor law abroad. Moreover, what makes a big difference is whether an employee resides abroad on the basis of a business trip or delegation. These constitute two separate structures of performing tasks ordered by the employer, with which other requirements, exemptions and results abroad are related.

Everything starts from essential procedures like establishing the reason a company intends to send an employee abroad. Once this issue is settled, an appropriate contract

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should be prepared, be it in the form of a business trip or in the form of an assignment agreement describing basic principles of performing the task. Why is it so? It's worth to determine whom a posted worker will be reporting and answering to while being abroad, who will be facing the costs of travel and lodging. Last but not least, it is important to decide on the time of the stay abroad. These seemingly trivial factors condition taxation abroad. If a company does not want a foreign stay to result in paying taxes abroad, all the above issues need to be settled before

travelling or posting. It is much easier to plan something ahead rather than tackle the issue of public authorities inquiring about proper documents and reasons for not meeting the conditions which allow an employee to work abroad.

Structures

Practically every company belonging to a global corporation has a delegation policy. These are documents which apply internally in a company and set general delegation rules. In principal, the market practice recognizes three types of delegation:

- 1. Short term assignment** – during this 3-12 month long posting, the employee remains employed in his mother company and works abroad. STA delegations are characteristic of foreign projects with a set deadline. Also, they are marked by particular compensation & benefits solutions and even distribution of costs between parties interested. Due to their short duration they often do not generate taxation effects.
- 2. Long term assignment** – posting exceeds one year and the employee often takes up a new role. The delegation does not have to be related to a specific project. Compensation & benefits are covered by the receiving party. In this case, taxation affects both parties and the employee themselves.
- 3. Permanent transfer** – this is not a typical delegation, but a formal change of employer. The Polish contract is terminated or suspended, while the employee signs a new employment contract (usually for an indefinite period) with the receiving company. This delegation type requires effective cost-planning as the relocation entails greater expenses, which are usually not returned as in the two aforementioned types. The transfer obviously yields taxation results for the employee.

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A delegating company needs to have clearly established rules, a well-prepared relocation package and a fixed and stable compensation & benefits policy. Only such structure will allow smooth management of Global Mobility within an enterprise.

Apart from the three structures in the area of Global Mobility, there is also business trip, i. e. a temporary performance of a task commissioned by the employer outside of the company's headquarters. Business trips are usually short-term, while the compensation & benefits package is rather poor. They usually do not generate taxation effects. However, the number of days spent abroad needs to be well-controlled since exceeding 183 days of stay in one country will certainly be of interest to the local tax authorities. Also, other decisions that may cause taxation abroad such as re-invoicing of wage costs need to be taken into consideration.

Structures are important. Why? A delegating company needs to have clearly established rules, a well-prepared relocation package and a fixed and stable compensation & benefits policy. Only such structure will allow smooth management of Global Mobility within an enterprise. Well-established rules contribute to the increase in the legal and tax security of the company, while the employees, from the very beginning of their delegation, are aware of what they can count on.

Chart 1

TYPES OF DELEGATION

What kind of delegation is it? Why does this type of delegation best suit our project?

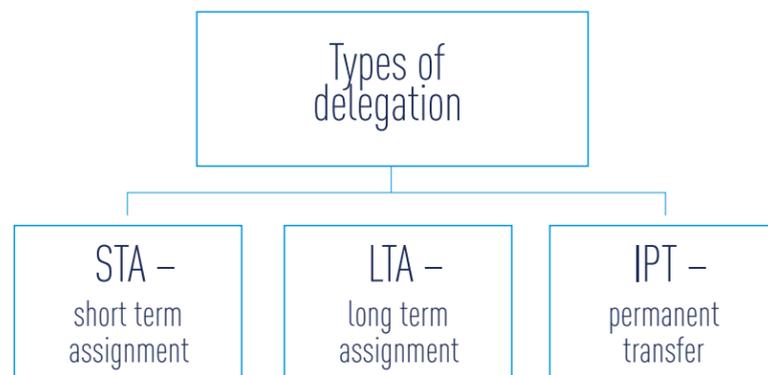
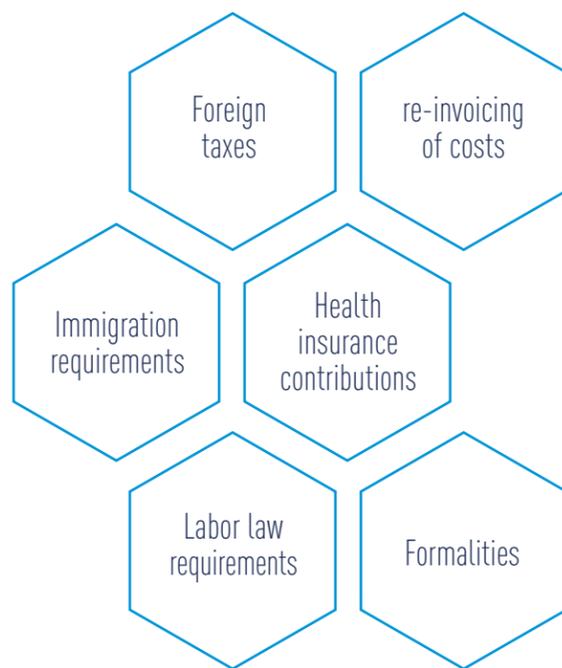


Chart 2

FOREIGN TRIP

Has everything been verified?



Starting the journey

The journey starts on paper. Once the reason for delegating an employee, policy and contract of posting are settled, formalities required for a stay abroad should be examined. Obviously, a stay within EU will generate different obligations than a stay in other countries. In the latter case, one will have to take into consideration the following factors: immigrant requirements, work and stay permits, the need to provide minimal remuneration based on local contract (e.g. Russia or Brazil), or issues connected with social security contributions.

For all these reasons, a delegating company needs to plan and settle all the formalities before the actual secondment. Why is it so? Obtaining a work permit in Russia, for example, may take longer or shorter time than obtaining a similar work permit in the USA. That is why Global Mobility experts, with their knowledge and experience (as internal specialists in the company or external consultants), can help the aforementioned processes to run more smoothly.

On delegation

Usually delegating companies decide to appoint external consultants who will secure the company's business in terms of tax. Consulting agencies have their foreign offices, which employ Global Mobility experts – tax advisors, lawyers, immigration experts and compensation & benefits specialists. New questions and circumstances that require fast reactions often arise during business trips. Instead of turning to foreign administrative institutions or looking for specialists on the spot, it is much easier to hand over the delegation process to experts from the onset. In case of emergency, they quickly contact a local consultant who responds to all the questions or doubts that may appear. There may be a lot of these:

- ⊕ During the delegation a child is born to an employee – how to legalize their stay and apply for family tax reliefs.
- ⊕ During the delegation local tax law changes drastically putting the employee at a disadvantage which he wouldn't have to face if he wasn't posted – how to adapt the employee's salary structure to ensure the most effective tax solution.

- ⊕ After the delegation ends the employee claims to have lost on tax while travelling and demands preparation of tax adjustment – only a provision in company's policy entitles the employee to such a claim.

Such situations are frequent during delegations. In Western countries it is a standard procedure for HR departments to distinguish special positions of Global Mobility specialist or advisor. For large scale projects, it is also a standard to employ external consultants in order to provide adequate protection under tax law and labor law. Consultants oftentimes advise on compensation & benefits strategy. What is more, digitization of all areas of life has led consulting companies to prepare special applications for HR and employees, helping to assess the requirements that have to be met, for example, when delegating an employee to Texas in the USA. This significantly shortens the decision-making process and allows to identify gaps in delegation planning.

Necessity or whim?

In order to answer this question, company's needs have to be considered. If a company plans foreign investments and reckons with the fact that its employees will be travelling more often to coordinate projects, build factories, participate in several-month trainings or internships at company's headquarters, Global Mobility ceases to appear as a whim mainly because of company's safety.

Just as it is worth hiring Transfer Pricing or VAT experts to ensure proper and effective tax management of the company, it is equally worth investing in Global Mobility so that the structures of delegation are tax-safe from the very beginning, well-planned, effective as far as salaries of the delegated employees are concerned, and compliant with laws and regulations in Poland and abroad. Only then will the company's management and immediate supervisors feel that they don't risk additional charges or consequences when sending an employee abroad. The employee also benefits from this policy.

Post-crisis reality has changed labor market and at present we are dealing with the employee's market. This wording means that today it is the



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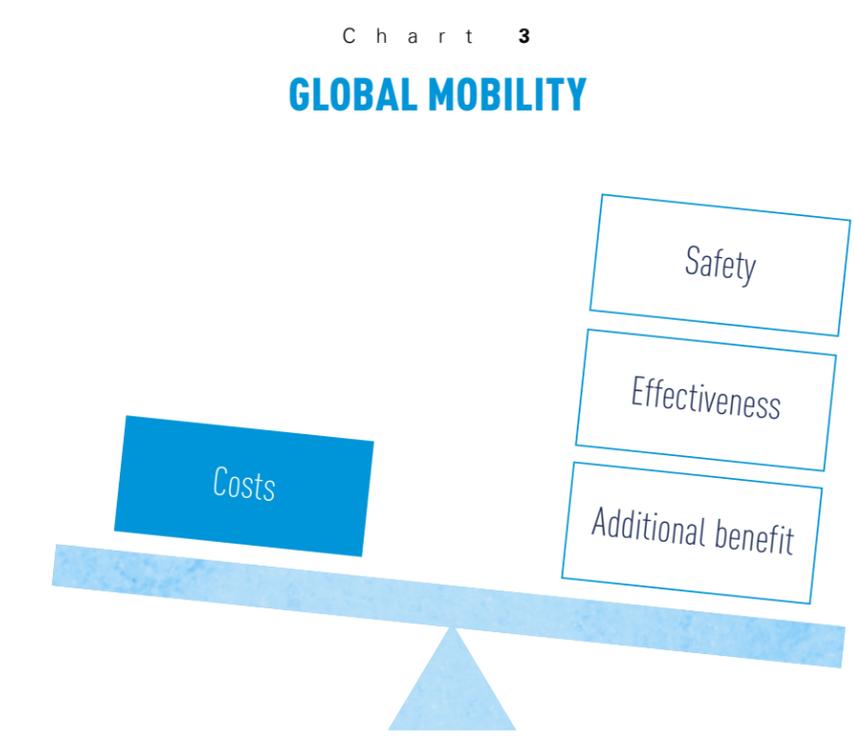
employee who dictates conditions and sets their own expectations at a fairly high level, while the employer has to adapt to it. What does employee's market have to do with Global Mobility then? This issue can be analyzed in two ways:

1. A satisfied employee is an effective employee. If an employer organizes delegation in a clear way that is compliant with existing policies, same for everyone, with a well-defined remuneration structure, tax-safe and provides support from advisors in Poland and abroad, they can count on their employee's loyalty. The employee will appreciate a well-organized delegation and will be willing to return to the employer after delegation terminates and share the experience gained abroad with others..
2. In times of constantly growing pressure to increase wages on the part of the employees, with simultaneous need to cut employees' costs on the part of the employers, delegating may be construed as an additional benefit resulting from work for a given employer, award for achievements, bonus equivalent or promotion. Delegating policy may constitute an important factor encouraging an employee to stay within a company and develop there. Finally, it fits in with the company's strategy to shape compensation & benefits.

Eventually, one should not forget about one of the factors which positively influences a company's PR. Firms which offer possibilities of working abroad, gaining experiences in foreign branches, frequent business trips are definitively more attractive employers than those maintaining more conservative attitude and appearing as more fossilized organizations. In the era when employers fight for the best specialists in a given branch, it's worth positioning the company as flexible, international and offering a chance of gaining experience abroad.

Summary

In Western European countries or in the USA, professional management of Global Mobility is a necessity. This is due to high awareness of officials and organizational culture of companies whose all areas of activity, be it production or HR management, are highly-structured and well-ordered. Progressive globalization, foreign



Firms which offer possibilities of working abroad, gaining experiences in foreign branches, frequent business trips are definitively more attractive employers than those maintaining more conservative attitude and appearing as more fossilized organizations.

investments and locating businesses in various jurisdictions affect the increasing mobility of employees. Such mobility causes a lot of consequences in the context of existing rules of law. To secure their financial and legal businesses, companies decide to develop themselves in the area of Global Mobility since they are aware of the benefits which come with it.

Polish market is changing from decade to decade and global mobility is growing in importance, which can be observed in migration statistics in recent years. In order not to be behind the times, it's worth investing in this area, properly preparing the company for its changing reality and employees' expectations, at the same time enjoying all the aforementioned benefits of Global Mobility. ■



SAFE JOURNEY TOWARDS INTELLIGENT AUTOMATION

Intelligent automation is changing the business world before our very eyes. This new wave of advanced technologies has a potential to fundamentally increase the speed, scale, quality and precision of operation of enterprises, cause an unprecedented increase in the operating efficiency or extend and complement human skills. Taking into consideration its clear advantages and broad possibilities of application, it is not a surprise that intelligent automation has become one of the key initiatives for many institutions.

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It should also be remembered that a condition for success of digital transformation is not only achieving the intended benefits but also a well-designed bank function, ensuring efficient identification, evaluation and mitigation of risks related to the implementation and functioning of the new solutions.

WHEN CAN ROBOTS GET OUT OF CONTROL?

Is a scenario of losing control over the operation of bots possible? Can intelligent automation tools, which important business processes depend on, fail and perform unintended and potentially harmful operations? Without an appropriate approach to risk management these hypothetical scenarios could come true. Regardless of whether it relates to individual areas or an entire bank, implementing intelligent automation may cause an increase not only in technological and operational risk but also, as a result, in regulatory, financial and reputational one.

Continuity of operation protection

Skills gaps, lack of qualitatively consistent training for developers, lack of change management processes, inadequate concern for cybersecurity, lack of control or ineffective control, these are just a few of many factors which may create an unstable environment of operation for bots.

In order to help minimize that risk, one should start by answering the following questions:

1. How to design automation in order to decrease probability and influence of a critical fault of a robot?
2. How to ensure a fast and effective return to operation after a fault, in particular when it affects processes which are critical for the bank?
3. How to manage changes in the environment of automation, while maintaining integrity, functionality, compliance and appropriate controls?

Lack of well-defined guidelines for the automation programme may make it impossible to fulfil requirements concerning risk management, control and compliance. Identification of an influence of internal and external requirements for compliance should be one of the first factors to be taken into consideration.

Assurance of compliance requirements

Lack of well-defined guidelines for the automation programme may make it impossible to fulfil requirements concerning risk management, control and compliance. Identification of an influence of internal and external requirements for compliance should be one of the first factors to be taken into consideration.

In order to minimize the risk it should be considered:

1. How to maintain safety and privacy of data during their storage, processing and transfer?
2. How to secure bots against unauthorized access to prevent leaking of data, stealing intellectual property or entering a malicious code?
3. How to guarantee that the processing of each transaction and the performed operations have an acceptable level of trust and integrity, in accordance with compliance requirements?

Appropriate access and authorization control

Lack of appropriate access and authorization control mechanisms for bots

creates a threat connected with inappropriate assignment of responsibility, division of duties and may result in potential unauthorized transactions. Inadequate integration and monitoring may also result in unnoticed control errors.

Appropriate assignment of access, safe authorization, division of duties and safe integration of application need to be included in the programme of intelligent automation. Lack of proper actions in this respect may lead to the loss of data and cause operational and image damage. Moreover, the requirements concerning data safety and privacy, including adequate opportunities of registration and audit, should be included in the designing process of the bots.

Managing automation-related risk

The described threats clearly show a critical need for strong management of risk connected with intelligent automation.

Like in the case of any complex process, it is important to effectively integrate risk management and governance with the whole ecosystem of

automation, including a dedicated function, responsible for supervising smooth operation of technology, processes and people creating automation programme.

Superior function of management and governance:

- ⊕ is one of the key requirements for effective realisation of business benefits resulting from intelligent automation,
- ⊕ should have informative and supervisory function in each part of the automation programme – from strategy, through building solutions, to productive action and maintaining bots,
- ⊕ should design and implement policies, procedures, standards and guidelines concerning automation,
- ⊕ should ensure risk supervision, including its identification, monitoring, assessment and mitigation.

Managing automation-related risk

What should risk integration and governance be like in the implementation of intelligent automation? These actions have been compiled in three basic stages.

1. Plan – analysis of the use cases

At this stage, the function of risk management and governance functioning will be responsible for current monitoring of an intelligent automation programme. This function should determine the risks concerning automation solutions, design and implement appropriate controls and initiate education of the stakeholders on their roles and duties in the area of automation risk management. Moreover, it should establish processes for overview, confirmation, deployment, management and elimination of bots.

2. Building safe bots

At this stage, the function of risk management and governance functioning will be responsible for current monitoring of an intelligent automation programme. This function should determine the risks concerning automation solutions, design and implement appropriate controls and initiate education of the stakeholders on their roles and duties in the area of automation risk management. Moreover, it should establish processes for overview, confirmation, deployment, management and elimination of bots.

3. Usage – the platform is not working. Now what?

The action now consists in control, capturing, analysing and transfer of the appropriate data, monitoring the integrity of automation processes and following changes in the IT landscape which may affect efficiency of bots. The function of risk and governance should monitor key risk indicators (KRI) and key productivity indicators (KPI) connected with the automation programme, and report them to the key stakeholders with an aim of optimization and increasing the scale of the programme. It should also draw up operation continuity and failure recovery plans.

Safe landing

Specificity of building solutions in the area of intelligent automation may prompt a quick and not necessarily well-thought-out implementation, but a successful implementation of intelligent automation requires a strategy involving also aspects of control and supervision. Therefore, already from the very start of transformation using intelligent automation there should be involved the competences which contribute to an appropriate design of solutions and ensure that the automation will be a safe journey for the bank. ■

Like in the case of any complex process, it is important to effectively integrate risk management and governance with the whole ecosystem of automation, including a dedicated function, responsible for supervising smooth operation of technology, processes and people creating automation programme.



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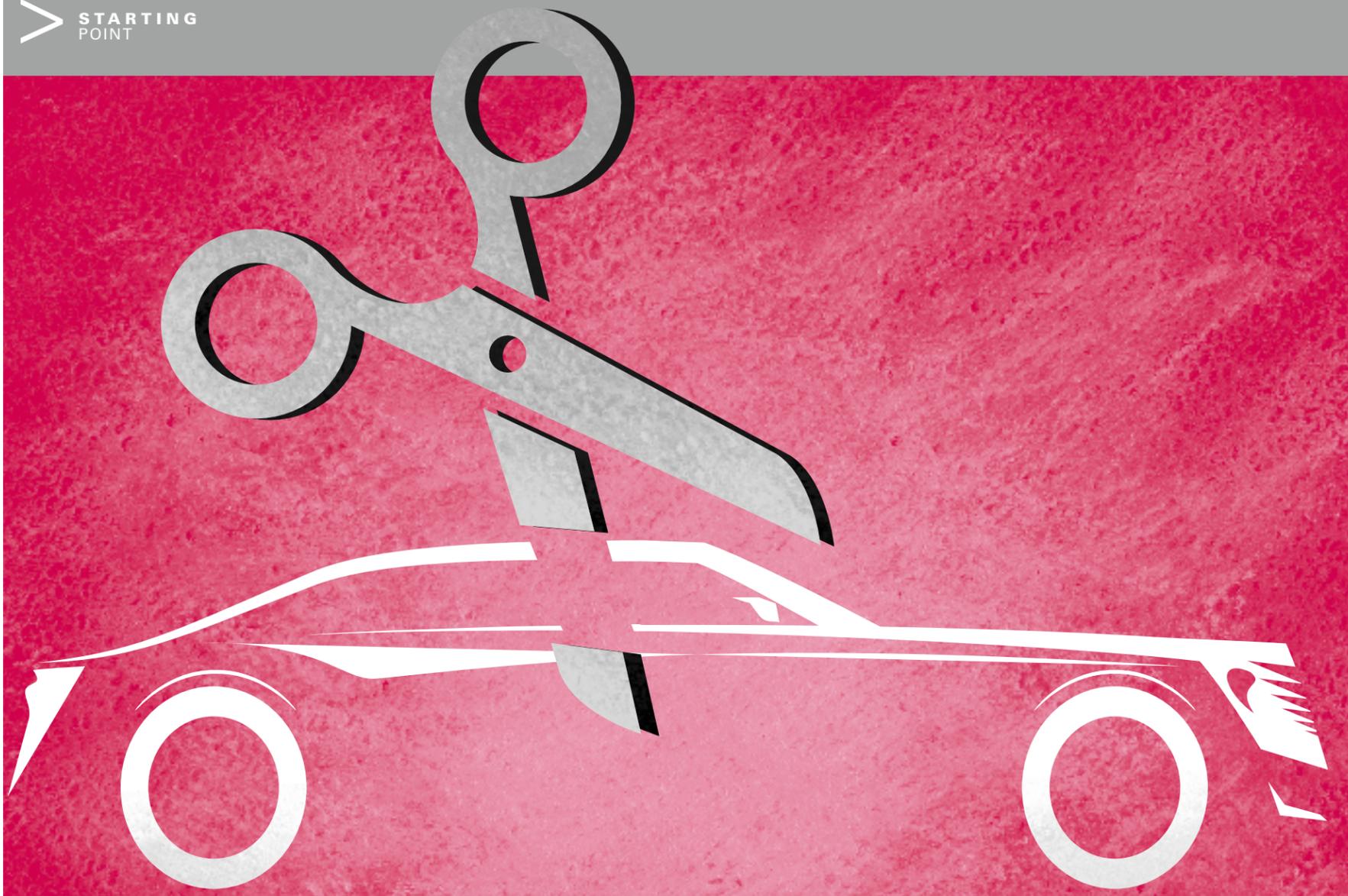
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THE END OF LUXURY CARS LEASE?

For years we have witnessed growing popularity of renting or leasing passenger cars. Leasing, perceived in the past primarily as a "tax-optimisation tool" and giving an entrepreneur flexibility in matching the costs to the revenue dynamics, has evolved in the recent years into a financially attractive method of using a car. Businesses have taken to use cars by paying a fixed cost, often without the need or intent to buy the car at the end of the lease term.



The advantages of leasing were leveraged irrespective of the scale of business (cars were leased for a monthly instalment of hundreds as well as thousands zlotys) as entrepreneurs benefited from the right to take the entire lease payment to tax-deductible costs.

Limitations

The lawmaker has taken care to limit tax benefits gained from the use of passenger cars, however so far the limitations concerned only the purchase of such cars. Income tax provisions cut the possibility to recognise as tax-deductible depreciation write-offs on cars worth more than the equivalent of EUR 20,000, insurance costs

of cars exceeding that limit or rental costs over the mileage allowance.

In 2014, the VAT Act amendment limited the right to deduct the amount of the tax charged to 50% of the VAT amount when a vehicle is used both for business and private purposes. As regards income tax, expenses incurred by businesses on lease payments have been 100% tax-deductible so far. However, this will change in 2019 in the case of more expensive cars. In line with the amendment, the part of the lease payment corresponding proportionally to the excess of the passenger car value over the limit of PLN 150,000, will not be tax-deductible.



Where does that amount come from?

If you intend to lease or rent a car worth more than PLN 134,529 net (PLN 156,470 gross), you should bear in mind a negative effect of the new provisions (as regards the lease, of course, as other expenses, such as fuel, maintenance and tyres will be included in a 75% limit) If the value of the car surpasses that amount, the initial payment and lease payments in 2019 will not be fully tax-deductible. Where did that "strange" amount come from since the amended provisions specify the limit of PLN 150,000? The amount results from the right to deduct 50% of the VAT, hence the limit of PLN 150,000 comprises the net price of a car and the non-deductible part of the VAT. The net price of PLN 134,529 + non-deductible part of the VAT totals PLN 150,000. The above applies to VAT payers as for entrepreneurs who are not subject to VAT the threshold is PLN 150,000 gross.

How to interpret the limitations?

Does it mean that the initial payment and all subsequent lease payments can be included in the tax-deductible costs until the statutory limit of PLN 150,000 is reached? Far from it. So, will it be possible to sign a long-term lease agreement for a luxury car and, once you reach the limit of PLN 150,000, return the car and lease another one for another lease term until the limit is met again, without any negative effects? No, unfortunately it



If you intend to lease or rent a car worth more than PLN 134,529 net (PLN 156,470 gross), you should bear in mind a negative effect of the new provisions (as regards the lease, of course, as other expenses, such as fuel, maintenance and tyres will be included in a 75% limit) If the value of the car surpasses that amount, the initial payment and lease payments in 2019 will not be fully tax-deductible.

IN THE LIGHT OF THE REGULATIONS



"Tax-deductible costs of a given passenger car do not include fees arising from the lease agreement referred to in Art. 23a(1) (PIT)/ Art. 17a(1) (CIT), rental agreement or any other agreement of a similar nature (with the exception of passenger car insurance premiums) in the part exceeding the limit proportional to the ratio of the amount of PLN 150,000 to the value of the passenger car being the subject thereof (...)."

In the case of a passenger car being an electric vehicle within the meaning of Art. 2(12) of the Act of 11 January 2018 on electromobility and alternative fuels (Journal of Laws it. 317) the limit (...) is PLN 225,000."

will not work that way either. Undoubtedly, the lawmaker did their best to prevent any methods of tax avoidance when making new laws on settlement of the costs of using passenger cars.

Did the lawmaker leave any options to businesses?

Entrepreneurs can conclude lease agreements still in 2018 for vehicles delivered after 1 January 2019. Concurrently to the works on Act

amendment, lessors have been working on the offer for customers planning to purchase higher-end cars before the end of 2018.

Where does this option come from? For tax purposes, a lease agreement is defined as "a contract defined in the civil code, as well as any other contract whereby one of the parties, referred to as the «financing party», provides the other party, referred to as the «user», with fixed assets or

intangible assets subject to depreciation, as well as land and the right of perpetual usufruct, for use or use and collection of profits against a fee."

We should refer to the Civil Code, which states that "in the lease contract, the financing party undertakes, within the scope of business of its enterprise, to purchase an asset from a given seller under the conditions specified in that contract and release that asset to the user for use or use and collection of profits for a definite time, and the lessee shall pay the lessor financial consideration in agreed instalments equal at least to the price or consideration borne by the lessor for purchasing the asset."

Why is it important? The very fact that the lessor undertakes to purchase the asset which will be leased in the future allows us to recognize that the agreement as a lease contract. Undoubtedly, the contract has to meet certain conditions of the lease term and the lease payments total stipulated in the income tax acts.

Dangerous changes in the contract

Signing a contract in 2018 seems easy. Is there a pitfall somewhere? Yes, we may fall into it in the future by amending the contract. Will all changes deprive us of benefits gained by signing the contract in 2018? Which changes are harmless, which should be a warning signal and which ones are absolutely out of the question?

When signing a contract, we should definitely make sure that despite the fact that the car will be delivered in the future and we do not know its exact initial value yet, the amount of the lease payments specified in the agreement should allow for performance of the contract without any later changes.

Another element requiring prudence is defining the term of the contract when we do not know yet when the car is going to be delivered and when the lease payments will start and end. Particular attention should be given to the fact that taxpayers will be able to include full lease payments in tax-deductible costs in the event of all contracts (even for the most

expensive cars) which will not be amended after 31 December 2018. What will it mean to the lessee? It will mean that all amendments to the lease contract may lead to forfeiting the benefits gained by signing it still in 2018. Should we therefore refrain from extending and shortening the contract term, making assignments, changing other provisions? Definitely yes. Which changes are allowed? This should be subject to detailed analysis in every individual case.

Perhaps a loan then?

A question may be asked whether funding a car purchase with a loan would be more profitable from the tax perspective.

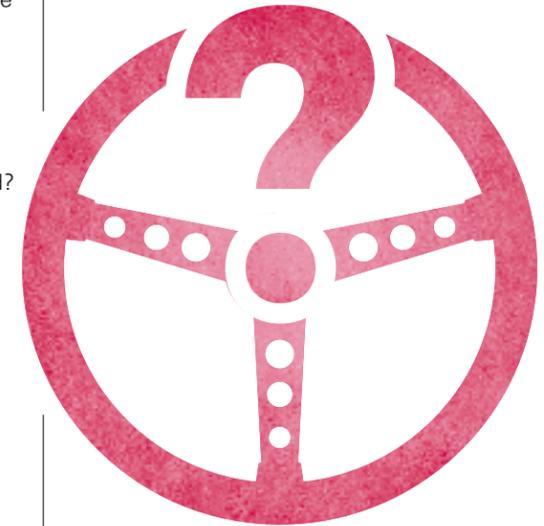
Making a comparative analysis, we should remember, though, that a possibility to include depreciation write-offs on passenger cars worth more than PLN 150k is limited. However, what can frustrate the attempt on luxury car lease, despite deterioration of the lessee's standing, is the amendment introduced by the Public Finances Commission (KFP). The amendment stipulates that at a passenger car sale the cost incurred to purchase it may be tax-deductible in the part not exceeding the limit of PLN 150k (PLN 225k for electric vehicles) and additionally reduced by the previously made depreciation write-offs. What does it mean for businesses? It means that purchase and sale of a car may lead to the need to pay a high tax...

Rental?

The amendment introduces also a provision whereby "if a rental contract or another agreement of a similar nature has been signed for the term shorter than 6 months, the value of the car (...) is understood as the value taken for the insurance purposes." That value decreases every year and as it falls... the amount of the expenses to be recognised as tax-deductible potentially grows.

Other limitations

The costs of lease payments were not the only ones to be capped. The amendment changed also the principles of recognising lease payments as tax costs and limited depreciation write-offs on passenger cars worth more than PLN 150k that could be entered as tax costs. The draft



When signing a contract, we should definitely make sure that despite the fact that the car will be delivered in the future and we do not know its exact initial value yet, the amount of the lease payments specified in the agreement should allow for performance of the contract without any later changes.





Particular attention should be given to the fact that taxpayers will be able to include full lease payments in tax-deductible costs in the event of all contracts (even for the most expensive cars) which will not be amended after 31 December 2018.

envisages also increasing to PLN 150,000 (PLN 225,000 for electric cars) the limit of a passenger car value up to which taxpayers would be entitled to deduct the entire amount of depreciation write-offs, as well as to increase accordingly the value of a car adopted for the purposes of calculating insurance premium which can be included in the tax-deductible costs. Moreover, a taxpayer will be entitled to deduct only 75% of the expenses related to the use of a passenger car for mixed purposes, i.e. for business and private use. This will hit those planning to lease a car as well as those who plan to finance its purchase with a loan.

How should we plan the use of higher-end passenger cars?

In the light of the planned changes, it is recommended to consider the following points:

1. What form of using a car may be most profitable after 1 January 2019?
2. Is it worthwhile to plan signing new lease or rental contracts still in 2018?
3. How should a lease or rental contract signed in 2018 be worded to let us settle the costs according to the presently applicable principles?
4. How can we apply in practice specific limits concerning the use of passenger cars after 1 January 2019? ■



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EMPLOYEE CAPITAL PLANS (PPK) – INVESTMENT IN THE FUTURE

The issue of retirement security of the Poles is debated by experts and pondered on by all interested parties. For many years, this issue has aroused controversy due to politicians' interference in its structure, which does not have positive impact on building citizens' trust for solutions offered by the government. Savings program for the Poles, also known as PPK, which was introduced in Polish legislation in October 2018, aims to contribute to the development of the Polish society's awareness of the need to build individual financial security for the future.





The “future”, in case of the Employee Capital Plan (PPK) is defined by the word “retirement”. Top companies recognized as attractive workplaces offer their employees universal pension schemes. Employee retirement or saving programme already constitutes a permanent element of building employees’ experience in many companies. The newly introduced governmental pension enhancement system in Poland is based on capital plans. The authors of the Act in Poland drew on foreign best practices (e.g. automatic enrollment of employees into the capital plans and the exit option). The UK experience shows for example a low level of participation as a consequence of the voluntary nature of joining the general capital scheme, which led to the introduction of automatic enrollment of all employees in 2012. This principle has also been implemented by Canada and New Zealand’s governments. Securing the future of citizens as a systemic solution for retirement saving plans has become a part of governmental programmes in many countries around the world.

PPK in Poland

The Polish form of the employee capital plan (PPK) should rather be seen as a kind of basis for an additional pay-out of the funds accumulated in the course of the professional activity of each individual. Some funds for additional pay-out are accumulated in addition to the common social pension scheme; this is because the pension itself for many citizens may barely contribute to guaranteeing satisfied life and secure the social basic needs of Polish pensioners.

This feature may be creating the greatest challenge related to the commonness of the PPK and jeopardize the rationale behind introducing a common capital plan for all working citizens. When assessing the readiness of the Polish society to take advantage of PPK, such features should be also considered as: affluence and wealth of the individual and the society, social pension system, pension awareness, and role of the employer in designing a pension security scheme for its employees. Other elements are not to be omitted and are subject of in depth insights of professionals such as – understanding the nature of the capital products offered, their transparency, simplicity and effectiveness. Tax incentives may also play an incremental role and decide of the prevalence of pension programmes

Developed countries with adapted comprehensive pension schemes and valued social security systems integrated into the national fiscal system, in such countries as Denmark or Sweden, have introduced capital plans with guaranteed payment of accumulated capital. This principle hasn’t been implemented in Polish PPK; and this may cause uncertainty among the employees contributing to the willingness of joining the PPK. What’s more, pay-out of funds deposited in the PPK participant’s account will depend on the capital market risk. However, it is by definition mitigated by statutory regulations.

based on capital plans. Developed countries with adapted comprehensive pension schemes and valued social security systems integrated into the national fiscal system, in such countries as Denmark or Sweden, have introduced capital plans with guaranteed payment of accumulated capital. This principle hasn’t been implemented in Polish PPK; and this may cause uncertainty among the employees contributing to the willingness of joining the PPK. What’s more, pay-out of funds deposited in the PPK participant’s account will depend on the capital market risk. However, it is by definition mitigated by statutory regulations. A part of the funds, called the debt part, shall be invested in a risk-averse instruments (bonds, bank deposits, etc.), while the equity part shall be invested in a more risky instruments aimed also at a greater profit opportunities (shares,

pre-emptive rights, and other transferable securities, etc.) The ratio of the debt part to the equity part shall depend on the age of the participant – the closer to the pay-out of funds, the more funds will be invested into risk-averse instruments (the ratio between equity and debt share shall be no less than 85%, while at the beginning of saving it can be up to 20% only).

The economic awareness of society and financial development of households in Poland can definitely influence the attractiveness of PPK among employees. Studies conducted in the field of the habitude of the Polish society with regard to long-term saving program indicate that at least half of adults do not have the habit of saving or do not have such prospects.

PPK seems to be answering the necessity for long-term saving perspective and companies may use the requirement to implement the programme as an occasion for implementing employee retention tools accordingly. Shall companies adopt a long-term perspective looking at the obligatory implementation of PPK, an introduction of a company employee pension scheme contribute to the employer attractiveness among passive candidates.

Employers are obliged to implement PPK according to the agreed schedule. The necessity of introducing PPK is inevitable, but employers may still decide on implementing PPE (Employee Pension Schemes) instead of PPK and exploit it as employee retention tool. Employers with adapted PPE before entering into force the PPK principle shall be exempt from the PPK implementation in accordance with the adopted schedule and size of the company.

Employee pension schemes (PPE) and Employee Capital Plans (PPK)

Basic fundamentals of PPE are similar to PPK fundamentals. Companies maintaining PPE by the date of the mandatory implementation of PPK can be released from the obligation joining PPK. However, some principles have to be fulfilled: the employer is obligated to pay at least 3.5% of the salary within the meaning of the PPE Act, and at least 25% of the workforce have joined the PPE.

Unlike the PPK, accession to the PPE by both the employer and the employee is entirely voluntary. The principle in the construction of the PPE is that the basic (mandatory) contribution is paid only by the employer (up to 7% of the

participant’s salary); the participant does not have to pay any contribution. However, in contradiction to PPK, the PPE participant does not receive subsidies from the State Treasury, as it is the case in PPK.

Pursuant to Article 42 of the PPE Act, the funds disbursement applies:

- ⊕ at the request of the participant when the participant has reached the age of 60 years,
- ⊕ at the request of the participant, after submitting the pension entitlement application and reaching the age of 55 years,
- ⊕ after the participant has reached the age of 70 provided they had not previously applied for the pay-out,
- ⊕ at the request of the entitled person, in case of the death of a participant.

Pay-out of funds accumulated in PPE may be made once or in instalments at the PPE participant request.

PPK – PAYOUT OF ACCUMULATED FUNDS

At the age of 60, the owner of funds accumulated in PPK receives the option of cash payment of 25% of the collected funds. The payment option is not mandatory, there is a possibility of resigning from the single payment. PPK funds will be successively disbursed in monthly instalments for at least 10 years (120 instalments).

A one-off early payment of funds from PPK is possible to finance the own contribution to the loan, e.g. when buying an apartment or house (the obligation to return within 15 years).

The funds collected may be paid out in the event of a serious illness of the participant, spouse or child. Serious illness includes permanent inability to work, which entitles the employee to an inability to work pension [on the basis of the Act of 17 December 1998 on pensions from the Social Insurance Institution (FUS)] and serious sickness conditions specified in the Act.

PPK –WHAT IS IT FOR?

The aim of the introduction of PPK is to increase the savings rate of the society in Poland. PPK are savings intended for the retirement of an employee (age 60 for women and men). PPK are universal in nature (with some exclusions of micro-entrepreneurs).



1~ PPK – WELCOME PAYMENT

Persons remaining in PPK for at least three months receive the so-called welcome contribution in the amount of PLN 250, which is transferred from the funds of the Labour Fund.

2~ PPK – ANNUAL EXTRA PAYMENT

Employees who accumulate in an individual PPK amount the equivalent to at least the sum of basic contributions from the amount of six times the minimum wage (the minimum wage from 1 January 2019 will amount to gross PLN 2250, i.e. 14.70 PLN per hour) may receive an annual extra payment in the amount of PLN 240.

3~ PPK- ACCEPTANCE CYCLE

Employers are obliged to register their employees to the PPK on a four-yearly cycle basis. If an employee has left the PPK, they can sign up again in the next acceptance window.

4~ PPK -VOLUNTARY PRINCIPLE

An employee may request the suspension of payments by making a written declaration to the employer. An employee has the possibility to make additional payments and build savings for retirement.



Employer obligation

The employer is obliged to enrol the employee in the PPK scheme, to pay wages on time and to oversee the administration of the programme. The employer is responsible for selecting a financial institution (investment funds, pension funds, insurance companies) and for signing the contract with it for PPK service.

Employers are obliged to conclude two types of contracts:

- ⊕ on PPK management, concluded between the employing entity and the financial institution,
- ⊕ on PPK maintenance, concluded between the employee and the financial institution.

Contributions to PPK

The rate is calculated on the basis of the employee's salary, which is the basis for the assessment of contributions for retirement and disability insurance, including parental and maternity leave. The employer's basic contribution to the PPK is 1.5%, while the employee contribution is 2%.

The employer and the employee may voluntarily increase the rate for PPK up to 4% by either side.

A total of 3.5% to 8% of the employee's salary can be credited to the PPK account.

Persons earning less than 120% of the minimum salary may finance less than 2% of the contribution base, but not less than 0.5% of the salary.

Entry of PPK into force

The legislator provided for a gradual introduction of the obligation for employers to join the PPK.

- ⊕ **1 July 2019 r.** – enterprises employing more than 250 persons as on 31 December 2018,
- ⊕ **1 July 2020 r.** – enterprises employing at least 50 persons as on 30 June 2019,
- ⊕ **1 July 2020 r.** – enterprises employing at least 20 persons employed as on 31 December 2019,
- ⊕ **1 January 2021 r.** – other employers and public finance sector units.

Studies conducted in the field of the habitude of the Polish society with regard to long-term saving program indicate that at least half of adults do not have the habit of saving or do not have such prospects.



SUPERVISION OVER THE IMPLEMENTATION OF PPK

Employees' Capital Plans are subject to the Polish Financial Supervision Authority, while the State Labour Inspectorate is obliged to monitor the employer's obligations arising from the PPK.

PPK – private property of the employee

The funds accumulated in PPK are private property of the employee. In case of death the funds are inherited.

Exemption from enforcement

The funds accumulated on the PPK cannot be subject to execution, except for the execution of alimonies

PPK risk

Employee Capital Plans are subject to capital market risk. Each financial institution must ensure that funds can be invested in the so-called defined date funds, applying different investment policy rules, taking into account the different age of PPK participants in a number corresponding at least to the number of restrictions on the level of investment risk depending on the participant's age.

Investment funds or pension funds that accumulate PPK funds can invest up to 30% of the accumulated assets in assets denominated in foreign currencies.

PPK Service Costs

The remuneration for the management of an investment fund, pension fund or sub-fund, being defined date funds, whose funds will be accumulated in PPK, shall not be higher than 0.5% of the net asset value per year. The fee for achieving a specified investment result shall not exceed 0.1%. This means that the total limit of fees charged by financial institutions is set at the level of up to 0.6% of their net asset value.



PAYMENTS FOR PPK – A SUMMARY:

PLN 250 – a single welcome payment from the State (free of income tax),

PLN 240 – an annual subsidy from the State (free of income tax),

1.5% of the basis for pension and disability insurance contributions – the employer's basic contribution,

2% of the basis for pension and disability insurance contributions – basic payment of a PPK participant,

maximum 2% of salary – additional payment of a PPK participant, which in total gives a maximum of 4% of the participant's contribution,

maximum 2.5% of the base salary – additional payment by the employer, which in total gives a maximum of 4% of the employer's contribution,

Fiscal incentives

Contributions made by the employer will not be included in the wages that form the basis for determining the amount of compulsory contributions to the pension and disability social insurance scheme. They may be classified as tax deductible costs, as well as other expenses incurred by the employing entity to ensure proper performance of obligations arising from the provisions on PPK. In strictly defined cases, the pay-out of funds accumulated in PPK shall also be exempt from taxation.

Summary

Employees' Capital Plans create opportunities and threats. Employers receive both a new range of liabilities and prospects. The implementation of PPK can be an effective mechanism for retaining employees in the company. The employer obtains a supplementary instrument for the development purposes of general knowledge enhancement of its employees; in this case the subject of development opportunities lies in the area of long-term saving plans and capital markets, which – when appropriately designed and intelligently implemented – create an unique employer value proposition. ■



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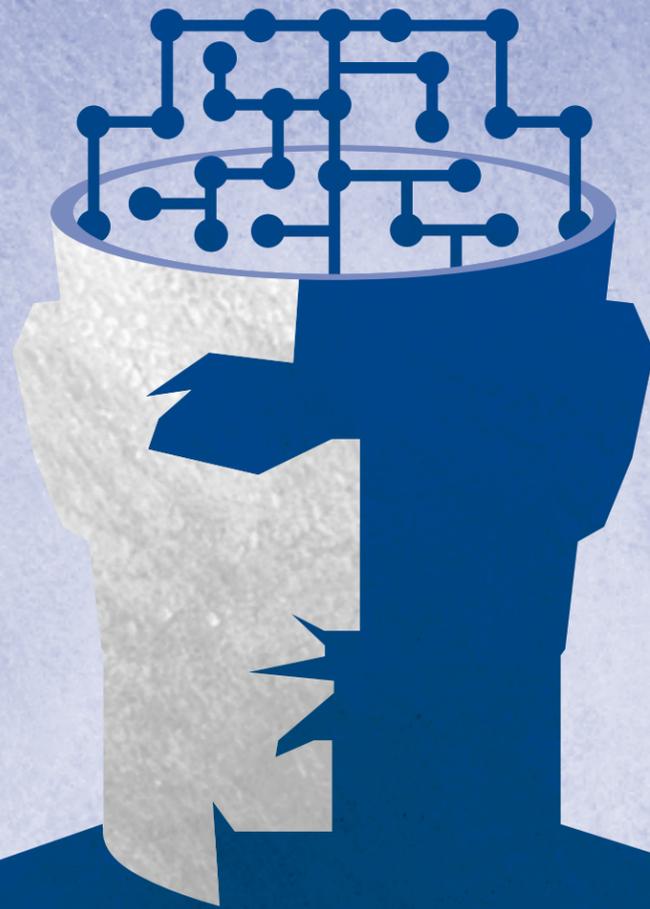
She specializes in the area of human resources management and change management (restructuring, reorganization and transformation processes). At KPMG, she is responsible for the area of services related to employee experience, organizational studies focused on employer value proposition. She has over 20 years of experience both in companies with domestic capital and in foreign corporations, gained abroad. She develops and promotes the idea of career mentoring and life style entrepreneurship.



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ARTIFICIAL INTELLIGENCE, REAL CHALLENGES – ARE WE READY FOR CHANGES?

The issue of *artificial intelligence (AI)* concerns not only the area of business and politics, where the speeches of world leaders even make references to a technological race for global supremacy, but also legal practice. Nowadays, when the law more and more often fails to keep up with the changing reality, getting ready for the forthcoming changes sufficiently in advance represents a genuine problem.

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New technologies, penetrating such spheres as transport (autonomous vehicles, intelligent traffic management systems), health, (advanced diagnostic tools, software providing medical consultation, designing new medicines), cybersecurity (intelligent systems for detecting suspicious online behaviour and reacting to it), customer services or marketing (analytics and strategy based on big data) are becoming increasingly present elements of the surrounding world.

In simple terms, it should be mentioned that the IT systems known to us so far are beginning to show features of intelligent behaviour and, by means of the environment analysis, they are capable of performing various tasks with some scope of autonomy in order to achieve specific goals¹. Writing here about a specific goal we mean performing a strictly defined task, e.g. vehicle control, face recognition, a game of chess, (the so-called narrow AI), unlike “general AI”, which in accordance with the predictions of futurologists, could overtake humans in their ability to solve problems and get ahead of them with respect to cognitive skills in any area.

Neither legal environment nor practice are in their current state entirely ready for such changes, in particular when it comes to an effective protection of the rights of a person interacting with AI. At the current stage, the institutions on both European as well as national level are working on designing a legal framework and favourable conditions for the development of innovative technologies based on AI. For the time being, we can talk about the identification of areas to be analysed and preparing framework for further work rather

than ready-made solutions. The above conclusions result from initiatives and documents, such as e.g. the EU’s recommendations regarding civil law provisions with respect to robotics², assumptions for the AI strategy in Poland³ or reports concerned with the evaluation of current legal regulations in the light of their validity and effectiveness with respect to technological challenges⁴.

Road safety

Due to the development of autonomous vehicles technology, one of the challenges will be the liability for damage caused with contribution of AI. According to the European Commission’s estimates, about 135 thousand people per year suffer serious personal injuries in road accidents in the EU, while 25 thousand lose their lives⁵. Developing technologies are to contribute to greater road safety by eliminating human error. However, errors on the part of machines will also be inevitable. How shall we, in that case, evaluate the responsibility for an accident caused by a vehicle, which is to a large extent or entirely autonomous (controlled without human involvement)? Should the liable party be the car manufacturer, the author of the control software, the vehicle user, the entrepreneur using it in the course of business or, perhaps, some other party? In the case when several bodies are to be held responsible, are we going to be able to decide, which one was actually at fault?

In accordance with current regulations, the vehicle possessor is liable for the damage to any person or property caused by the movement of this vehicle. Provided that the above rule is not altered, what about a situation when AI is the real cause of an accident and the possessor

Developing technologies are to contribute to greater road safety by eliminating human error. However, errors on the part of machines will also be inevitable. How shall we, in that case, evaluate the responsibility for an accident caused by a vehicle, which is to a large extent or entirely autonomous (controlled without human involvement)?

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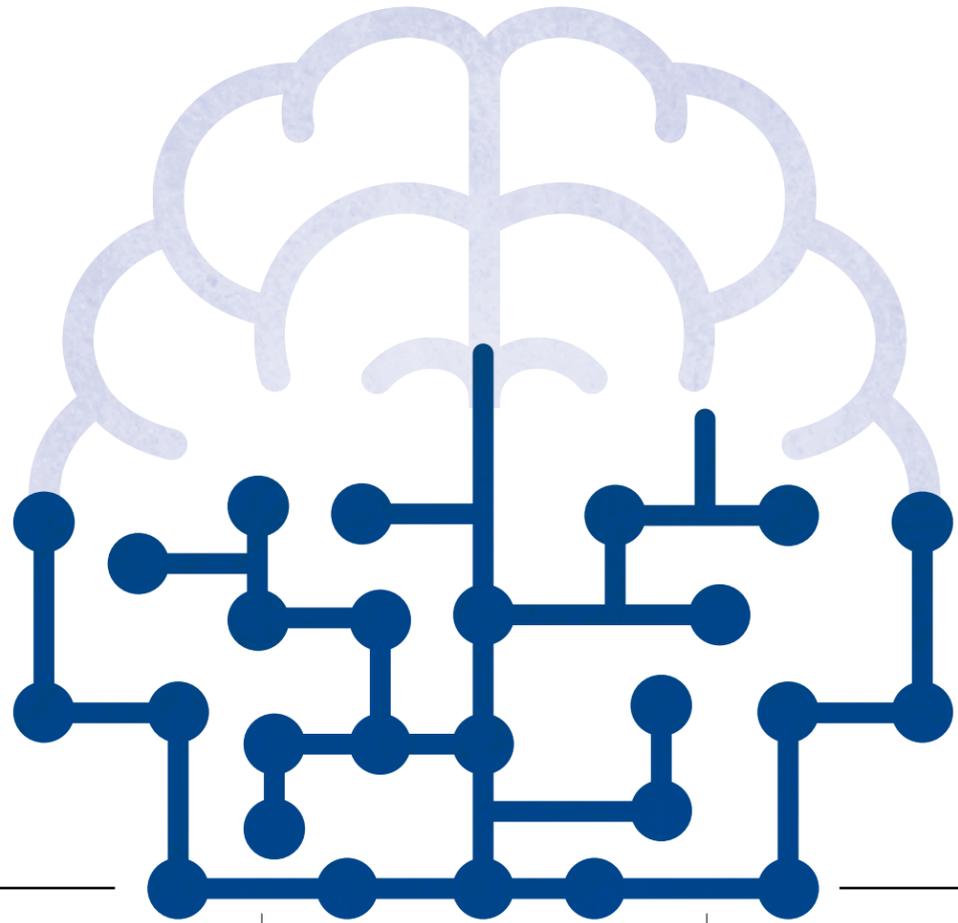
¹ Following the definition proposed in the European Commission’s Communication of 25 May 2018 on Artificial Intelligence for Europe.

² The European Parliament’s Resolution of 16 February 2017 with recommendations to the European Commission on Civil Law Rules on Robotics (2015/2103(INL)).

³ Assumptions for the AI strategy in Poland. The Ministry of Digitization Action Plan of 9 November 2018.

⁴ Exemplary report from the European Commission on the evaluation of the Council’s Directive of 25 July 1985 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

⁵ A report published by the European Commission: Road Safety in the European Union — Trends, statistics and main challenges, 2018.



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does not have any influence on the damage caused? Assuming a possibility of recourse against the autonomous vehicle manufacturer or importer, when the fact that the product was dangerous was taken as a circumstance, the exercising of rights is likely to be stifled. It relates to the so-called development risk clause, i.e. the possibility of excluding manufacturer's liability if, in accordance with the current state of science and technology, it was impossible to foresee dangerous product features and a possible argument that its dangerous features were only revealed after the product had been introduced onto the market.

AI is self-learning

This problem is gaining importance in the context of machine learning, i.e. (simply stated) learning of a machine / software by experience, not acting on the basis of strictly programmed instructions. An example could be an experimental vehicle demonstrated

in 2016 by Nvidia company, which learnt itself driving on the roads only by observing drivers' behaviour. In the case of failure to perform the programmed instructions, the manufacturers could always try to refer to the above exclusion of liability for the unforeseen and dangerous features of AI. The matter is becoming even more complicated when the products based on AI interact with one another (e.g. vehicles communicating with one another, V2V – Vehicle-to-Vehicle) or if there is communication between vehicles and the environment (e.g. traffic lights). In this situation it will be hard to find the source of the defect and hold a specific body liable for damage caused by a product interacting with other products or services. A proposed solution for such cases could be developing new insurance products by insurers or introducing special compensation funds in relation to the consequences of actions of the machines (robots) introduced onto the market⁶.

Applying intelligent technology can also make one subject to other claims. Even now, there are possible processes of automatic decision-making in relation to individuals in the areas such as hiring (recruitment) or financial services, which may lead to discrimination of people who do not match the stereotypes learnt by AI.

Access to the black box

Applying intelligent technology can also make one subject to other claims. Even now, there are possible processes of automatic decision-making in relation to individuals in the areas such as hiring (recruitment) or financial services, which may lead to discrimination of people who do not match the stereotypes learnt by AI (the case of Amazon's experimental recruitment tool, which evaluated women candidates for the positions related to software development as worse than men). An important issue here is ensuring transparency or possibility to understand decisions which might be taken by AI.

In the case presented above it was possible to explain and describe in the media a scheme learnt by AI when analysing candidates. The mechanisms that the actions of AI are based on might, however, be so complicated that their authors could have a problem determining the rules governing particular decisions. For this reason one of the postulates concerns introducing a requirement for maintaining black boxes for AI and registering operations and logical

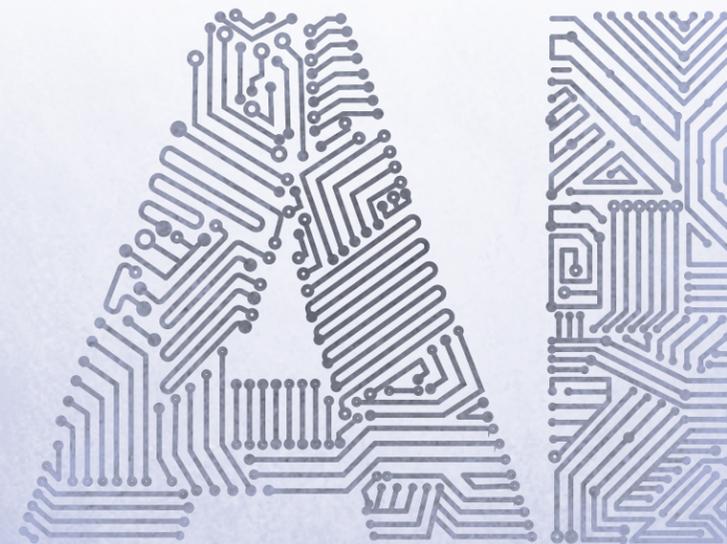
steps leading to every decision taken by AI. It undoubtedly has a significance from the point of view of control over operations taken by AI and the possibility of their being predicted by humans.

Robot in compliance with GDPR

Transparency of decisions taken by AI poses a challenge not only for the lawmakers but also for the practitioners, which concerns compliance with the regulations already in use, e.g. General Data Protection Regulation (GDPR). AI decision processes might be subject to GDPR regulation, which basically forbids automated decision-making in individual cases having significant impact upon natural persons. If, however, there occurs a situation when it is acceptable – the interests of such persons need to be adequately secured (e.g. by ensuring the right to human intervention or a possibility of contesting a decision taken by a robot). Taking into consideration the philosophy of GDPR, modern machine learning applications should have the function of presenting information about the logics of the decision or the criteria for this decision in an interpretable

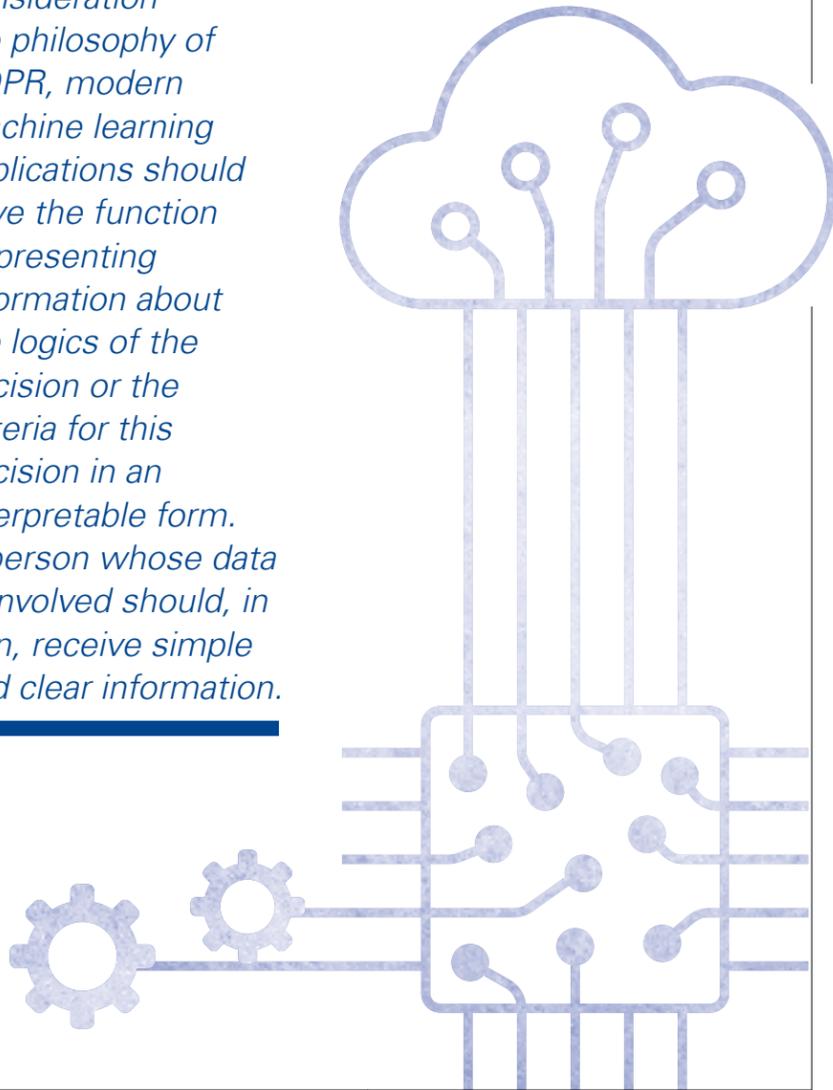
form. A person whose data is involved should, in turn, receive simple and clear information. Therefore, information clauses about personal data processing should encompass essential information on the rules for taking automated decisions, as well as their significance and forecast consequences of processing that data. Such information should basically be communicated already at the start – the moment of collecting personal data. This represents a significant challenge, as in many cases, developers of the applications may not have the knowledge of the logics AI follows when taking decisions and the factors it analyses. »

The mechanisms that the actions of AI are based on might, however, be so complicated that their authors could have a problem determining the rules governing particular decisions. For this reason one of the postulates concerns introducing a requirement for maintaining black boxes for AI and registering operations and logical steps leading to every decision taken by AI.



⁶ EP resolution, p.15.

Taking into consideration the philosophy of GDPR, modern machine learning applications should have the function of presenting information about the logics of the decision or the criteria for this decision in an interpretable form. A person whose data is involved should, in turn, receive simple and clear information.



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Objectification?

The above issues constitute only a fragment of the emerging legal problems concerning the use of AI in the context of the guarantee of protection of rights of the people in contact with AI. Nevertheless, the subjects of discussions are also the issues related to own legal capacity of AI.

Although in the European forum appear the concepts of distinguishing an electronic person in order to allocate responsibility for damage caused by AI, experts have been critical of them. The reasons given are, first of all, the adverse effects on

the liability or the fact that the concept is not in agreement with our legal culture. Perhaps, also in non-legal areas, any kind of recognition of the artificial intelligence should be inadvisable. Paraphrasing the philosopher Daniel Dennett in relation to the concept of equipping machines with consciousness, it would be unwise, because it would not make robots more intelligent, but only anxious. The question is, whether they would be as anxious as the lawyers who have unnecessary concerns about robots taking over their workplace. The work, however, is what lawyers are going to have plenty of due to the development of AI. ■

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Publisher: KPMG Sp. z o.o. – ul. Inflancka 4A, 00-189 Warszawa, tel. +48 22 528 11 00, fax +48 22 528 10 09, kpmg.pl
Editor in Chief: Magdalena Maruszczak | **Managing Editor:** Krzysztof Krzyżanowski
Realization: Skivak Sp. z o.o.

kpmg.com/pl/en
kpmg.com/pl/TurningPoint

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