



Anti-Crisis Shield - KPMG Services



To mitigate adverse economic effects of the COVID-19 pandemic, the Polish government has developed a raft of regulations, commonly referred to as the **'Anti-Crisis Shields'**, which includes assistance measures and solution concepts, the aim of which is **to support enterprises** – regardless of their size and scale – **suffering from decline in revenues, operational problems, disruption in supply chains, shortfall of workforce and related health issues as well as facing risk of losing liquidity or solvency.**

The developed Anti-Crisis measures include regulatory & fiscal solutions, as well as financial instruments supporting liquidity (offered, among others, by *Bank Gospodarstwa Krajowego* and *Polski Fundusz Rozwoju*). The newly emerged regulations empowered local authorities to increase support for commercial entities operating within their administrative reach.

KPMG support

We can assist you in analysing and selecting an optimal method of utilisation of the available State aid instruments (also those available under the "Shield 4.0"), including:



Identifying impact of the pandemic upon your company;



Interpretation of the legal, administrative, and regulatory requirements for using the assistance package;



Selection of the most appropriate from of available aid;



Preparation and submission of relevant applications, along with the required attachments and statements;



Provision of legal advisory services regarding:

- contracts not being fulfilled or requiring re-negotiating;
- extraordinary labour law solutions (e.g. downtime agreements, reduced work-time arrangements, arrangements related to suspension of the Social Benefits Fund operation, workforce optimisation, remote or shift work implementation and dissolution of non-competition agreements in force);
- corporate restructuring (including simplified restructuring procedures);
- the Public Procurement Law (especially in terms of amendments introduced by the Anti-Crisis Shield Acts, aimed at protecting the contractor against the loss of liquidity).

The documents attached contain the summary of the currently available (as of 26 June 2020) forms of anti-crisis State assistance. Nevertheless, **we are ready to support you with our expertise in exploring and utilising opportunities offered by the already existing regulations in the following areas:**



property tax



research & development tax relief



civil code



labour laws, collective redundancy regulations, and changes hereto introduced by the Anti-Crisis Shield



restructuring and bankruptcy laws



the Public Procurement Law

Rational selection and utilization of the solutions listed above may positively impact cost base and the level of financial obligations borne by your companies.

If you are interested in discussing and exploring options available to your company, please do not hesitate to contact us.

KPMG offices

pl **Warszawa**

ul. Inflancka 4A
00-189 Warszawa
T: +48 22 528 11 00
F: +48 22 528 10 09
E: kpmg@kpmg.

pl **Kraków**

ul. Opolska 114
31-323 Kraków
T: +48 12 424 94 00
F: +48 12 424 94 01
E: krakow@kpmg.

pl **Poznań**

ul. Roosevelta 22
60-829 Poznań
T: +48 61 845 46 00
F: +48 61 845 46 01
E: poznan@kpmg.

pl **Wrocław**

ul. Szczytnicka 11
50-382 Wrocław
T: +48 71 370 49 00
F: +48 71 370 49 01
E: wroclaw@kpmg.

pl **Gdańsk**

al. Zwycięstwa 13a
80-219 Gdańsk
T: +48 58 772 95 00
F: +48 58 772 95 01
E: gdansk@kpmg.

pl **Katowice**

ul. Francuska 36
40-028 Katowice
T: +48 32 778 88 00
F: +48 32 778 88 10
E: katowice@kpmg.

pl **Łódź**

ul. Składowa 35
90-127 Łódź
T: +48 42 232 77 00
F: +48 42 232 77 01
E: lodz@kpmg.pl

mam pytanie@kpmg.pl

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KPMG Poland

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Subsidies, reliefs and grants and specific employees' collective agreements

Direct support tools for companies suffering from financial difficulties induced by the pandemic include:

- **Payroll subsidies** paid under the *Guaranteed Employee Benefits Fund* ("GEBF"; Polish: *Fundusz Gwarantowanych Świadczeń Pracowniczych*) to protect existing workplaces:
 - a company suffering from decline in turnover following the COVID-19 pandemic may apply for subsidies from GEBF covering **salaries of employees affected and not affected by downtime as stipulated by the Labor Code, economic downtime or reduced working hours**, and the corresponding part of the social security contributions.
- **Support dedicated to micro-, small- and medium-sized enterprises:**
 - support provided by the relevant *District Governor* (Polish: *starosta*) based on a relevant agreement covering employees' salaries and the corresponding part of the social security contributions;
 - co-financing of part of the business cost by the competent *District Governor*;
 - loans from the Labour Fund in the maximum amount of PLN 5 thousand with an annual interest rate of 0,05% of the National Bank of Poland's rediscount rate, with redemption option, provided that regulatory requirements have been met;
 - downtime support for the self-employed individuals.

Support packages offered by local authorities

Under the Regulations of Minister of Health dated 13 March, and 20 March 2020 on the declaration of the state of epidemic in Poland, local authorities have been granted broader (than those resulting exclusively from Article 67a of the Tax Ordinance Act) powers to **support companies suffering financial difficulties as a result of the COVID-19 pandemic**. The following forms of aid may be used:

- suspension of rent payments;
- deferring payments of property tax, forestry tax; agricultural tax, and transportation tax;
- deferring land lease payments;
- permission to pay the liabilities listed above in instalments, along with cancellation of interests;
- postponing property tax payments.

The above will allow for:

- **Exempting** selected groups of companies **from property tax** paid on land and buildings used for business activity **for a part of 2020**;
- **Postponing – based on the decision of the competent local council** – deadlines for property tax payments – no longer however than until 30 September 2020. In case of private individuals, this may be applied to the instalments to be paid until 15 May, while in case of legal entities, to the instalments to be paid until 15 April, 15 May, and 15 June 2020;
- **Postponing, until 30 June 2020, payment of perpetual usufruct** charges and charges for transformation of perpetual usufruct into regular ownership.

The companies may request the following types of support:

- based on Article 67a (in conjunction with Article 67b) of the Tax Ordinance Act:
 - postponing tax payments by 2 to 6 months or arranging for instalment payments;
 - postponement or redemption of overdue tax liabilities, including interests;
 - partial or complete redemption of overdue tax liabilities along with interest or extension fee.
- provisions of the "Anti-Crisis Shield":
 - exemption from property tax for a part of 2020;
 - suspension of perpetual usufruct charges for 3 months and of perpetual usufruct transformation charges.

The aforementioned support measures are considered to be a form of *de minimis* or special aid and may require meeting relevant conditions by the requesting company, including provision of proper documentation. **In particular, any significant changes in the business activity that have taken place since the declaration of the state of epidemic should be disclosed.**

Specific employees' collective agreements

A company suffering from decline in turnover following the COVID-19 pandemic may need to introduce changes to the standard working time or work organization in order to adopt to changed economic requirements. To that the company

may agree with its employees to introduce specific collective agreements resulting in a reduction of remuneration and/or working time or a change in the work schedule, namely:

- agreement on economic downtime;
- agreement on reduced working time;
- agreement on the implementation of balanced working time system.



Changes in tax regulations and possible tax reliefs

- An option to deduct tax loss incurred in 2020 from taxable income earned in 2019 (loss carry backwards), by adjusting the tax declaration for 2019, if **revenues in 2020** dropped by **50% or more vs 2019**. The adjustment may not exceed **PLN 5 million**;
- An option for 'small taxpayers' to waive the requirement to pay tax advances in a simplified form;
- Exempting debtors that were adversely affected by COVID-19 from the obligatory application of the so-called bad-debt relief, provided that their revenues in 2020 were by at least 50% lower than in the comparative period in 2019;
- Cancellation of extension fee and penalty interests for delays in payments;
- An option to apply to the revenue office for reliefs regarding:
 - deferment of tax payment deadlines (along with other tax-related deadlines);
 - spread of tax payment into instalments;
 - deferment or spread into instalments of tax arrears payment, including default interest;
 - deferment or spread into instalments of interest payment;
 - partial or total remission of tax arrears and default interest;
 - limited collection of tax advance payments (simplified advances);
- Exemption from income tax (both CIT and PIT), 3-month exemption from paying social security contributions and redemption of micro-loans for entrepreneurs;
- 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 SAFT_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 (only in 2020) 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);
- The 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;
- 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;

- 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);
- The 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;
- The possibility of deducting in-kind donations like laptops and tablets (no 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.



Assistance packages offered by BGK

De minimis bank guarantees for micro, small, and medium-sized enterprises

The de minimis guarantee system has been modified in order to:

- increase coverage **up to 80% of the amount of the secured loan**;
- suspend the bank's commission in the first year of the guarantee;
- increase the **maturity up to 39 months** for working capital loans;
- waive commissions – for guarantees already issued – until 31 December 2020.

These guarantees may be used as collateral for loans taken out by companies operating in any business sector. These rules will be applicable until **31 December 2020**. The financial standing of the companies applying for this kind of guarantee will be assessed by the lending banks.¹

Guarantees are available to companies that did not have – as at 1 February 2020 – any overdue liabilities towards the Social Insurance Institution (Polish: *Zakład Ubezpieczeń Społecznych*) and the Revenue Office (Polish: *Urząd Skarbowy*).

Biznesmax bank guarantees for micro, small, and medium-sized enterprises

Biznesmax bank guarantee is a charge-free type of financial collateral offered to innovative companies under innovation development support programmes (Polish: *Fundusz Gwarancyjny wsparcia innowacyjnych przedsiębiorstw Programu Operacyjnego Inteligentny Rozwój*). BGK has

introduced changes (in force until 31 December 2020) to this product that will allow:

- to use it as collateral for working capital or overdraft loans and supporting liquidity, not only of innovative, but also ecologically effective companies;
- for the alignment between loans covered by these guarantees and innovative investments completed or in progress to be relaxed, and simplified rules for extending guarantees are planned to be introduced;
- for catalogue of qualified costs and investment project plans not to be required for guarantees under de minimis aid;
- to extend the period of application of a 5% reference rate for calculation of interest rate subsidies until **31 December 2021** (originally: 31 December 2020);
- to apply interest rate subsidies to revolving loans.

Liquidity guarantees for medium-sized and large companies

BGK will establish a **Liquidity Guarantee Fund** (Polish: *Fundusz Gwarancji Płynnościowych*) to support medium-sized and large companies. The liquidity guarantees are going to have the following characteristics:

- they will be applicable for loan agreements concluded or revolved **not earlier than on 1 March 2020**;
- their amount will vary from **PLN 3.5 million to PLN 200 million**;
- they will provide coverage **up to 80% of the amount** of the loan (loans up to PLN 250 million);
- their max maturity will be **27 months**.

¹ The list of banks is available on: <https://www.bgk.pl/pakietpomocy/systemy-gwarancji/>

These guarantees may be used to secure loans drawn to secure liquidity only. They will require pledging own promissory notes. They will be offered until **31 December 2020**. The guarantees will be available for companies that did not have – as at **1 February 2020** – any overdue liabilities towards the Social Insurance Institution (Polish: *Zakład Ubezpieczeń Społecznych*), and the Revenue Office (Polish: *Urząd Skarbowy*) and also as at **December 31, 2019** were not in a difficult situation, as well as had no negative record in the credit or debt information bureaus used by the banking sector.

These guarantees can be obtained via banks cooperating with BGK, list of which is available on BGK web-site.

Interest rate subsidies

Under the Shield 4.0 it became possible for BGK to launch an **interest rate subsidization fund** available to companies adversely affected by the COVID-19 pandemic. This form of support will be available for **revolving and non-revolving working capital loans**. The amount of the subsidy will depend on the company's size: SMEs will be eligible for a 2-percentage point subsidy, while large businesses may receive a support in the amount of 1 percentage point. It is planned to provide such type of support for the maximum period of 12 months.



Liquidity support facilities offered by the Polish Development Fund (PL: *Polski Fundusz Rozwoju*; "PFR"): PFR Financial Shield for Companies, and Employees

PFR Finance Shield addressed to Large Enterprises

The PFR aid programme for Large Enterprises will support companies by providing financing in the form of:

- **loans or bonds** for a period of **4 years** (with the option of extension for one year) up to **PLN 1 billion** (liquidity financing);
- **preferential loans** for a period of **4 years**, partly redeemable, based on financial loss and maintaining level of employment, up to **PLN 750 million** (preferential financing);
- equity financing (on an arm's length basis or as part of public support) **up to PLN 1 billion** (investment financing).

In addition to large enterprises, the aid programme will be available to **small and medium-sized enterprises employing more than 150 employees** as of 31 December 2019 (excluding the owner), whose **turnover for 2019 exceeded PLN 100 million** and the financing gap according to the financial projections exceeded PLN 3.5 million, or the financing was related to the Sectoral Programme.

Requirements to meet:

- on-going business activity as of 31 December 2019;
- no overdue tax, and social security liabilities as of 31 December 2019 or as of the date of extending financing facility (*deferment or agreed instalment are not considered as overdue liabilities*);

- no opened bankruptcy, liquidation or restructuring proceedings as of the date of application and as of the date of extending financing facility;
- place of tax residence in the European Economic Area Member State, place of business registration in Poland, and place of tax residence of ultimate beneficial owner other than in so-called „tax haven countries” (if applicable). Waiver is possible in case of obligation of the beneficiary or its ultimate beneficial owner to move the tax residence to the European Economic Area within 9 months of extending the loan;
- suffering from economic difficulties in the wake of the COVID-19 pandemic:
 - loss of the ability to produce or provide or receive services due to limited availability of components;
 - decrease in sales revenues by at least 25% in any month after **1 February 2020** compared to the prior month or equivalent month in the prior year;
 - difficulties in collecting trade debtors in the amount exceeding 25% of trade receivables;
 - lack of access to the capital market or credit limits in relation to new contracts.
- or participation in Sectoral Programmes in relation to COVID-19.

Support will be provided based on the application submitted via the PFR website.

PFR Finance Shield addressed to Small and Medium Enterprises

April 29, 2020, PFR launched the aid programme for Small and Medium Enterprises in the form of a preferential loan which will aim to:

- to cover the costs of the business activity, excluding business acquisitions;
- early repayment of existing loans (up to a maximum of 25% of the loan value).

The amount of support will constitute % of the sales revenues earned in 2019 and will depend on their percentage decrease. The loan cannot be used to transfer payments to the owner and related parties.

Requirements to meet:

- on-going business activity as of 31 December 2019 and as of the date of application;
- no overdue tax, and social security liabilities as of 31 December 2019 or as of the date of extending financing facility (deferment or agreed instalment are not considered as overdue liabilities);
- no opened bankruptcy, liquidation or restructuring proceedings as of the date of extending financing facility as of the date of application;
- place of tax residence in the European Economic Area Member State, place of business registration in Poland, and place of tax residence of ultimate beneficial owner other than in so-called „tax haven countries” (if applicable). Waiver is possible in case of obligation of the beneficiary or its ultimate beneficial owner to move the tax residence to the European Economic Area within 9 months of extending the loan;
- decrease in sales revenues by at least 25% in any month after 1 February 2020 compared to the prior month or equivalent month in the prior year.

The loan may be written-off to a maximum of 75%, at the end of the 12th calendar month from the date of its extension, in accordance with the following rules:

- 25% subject to operation of business activity;
- 25% depending on the loss on sales incurred;
- 25% if average employment is maintained for a period of 12 months.

Application form is available as part of the electronic banking system of selected banks, the list of which is available on the PFR website.

PFR Finance Shield addressed to Micro Enterprises

April 29, 2020, PFR launched the aid programme for Micro Enterprises in the form of a preferential loan which will aim to:

- to cover the costs of the business activity, excluding acquisitions;
- early repayment of existing loans (up to a maximum of 25% of the loan value).

The amount of support will constitute product of the number of employees and the base amount of the subsidy and will depend on the scale of the decrease in revenues of the microenterprise. The loan cannot be used to transfer payments to the owner or to the related parties.

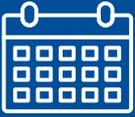
Requirements to meet:

- on-going business activity as of 31 December 2019 and as of the date of application;
- no overdue tax, and social security liabilities as of 31 December 2019 or as of the date of extending financing facility (*deferment or agreed instalment are not considered as overdue liabilities*);
- no opened bankruptcy, liquidation or restructuring proceedings as of the date of application as of the date of application;
- place of tax residence in the European Economic Area Member State, place of business registration in Poland, and place of tax residence of ultimate beneficial owner other than in so-called „tax haven countries” (if applicable). Waiver is possible in case of obligation of the beneficiary or its ultimate beneficial owner to move the tax residence to the European Economic Area within 9 months of extending the loan;
- decrease in sales revenues by at least 25% in any month after **1 February 2020** compared to the prior month or equivalent month in the prior year.

The loan may be write-off to a maximum of 75%, at the end of the 12th calendar month from the date of payment, in accordance with the following rules:

- 25% subject to operation of business activity within 12 months of loan granting;
- 50% depending on the level of maintaining average employment over a 12-month.

Application form is available as part of the electronic banking system of selected banks, the list of which is available on the PFR website.



Changes in deadlines for financial and tax reporting

The regulations under the “Anti-Crisis Shield” changed submission dates for some tax returns as well as deadlines for implementing changes to the tax reporting schemes or introducing new obligations to the taxpayers:

- Deadlines for preparation of the financial statements **were delayed by 3 months** (by 2 months in case of public interest entities);
- Deadlines for submitting **ORD-U** returns (for the periods ending between 31 March 2020 and 31 May 2020) and **IFT-2R** returns (in a situation where the fiscal year ends between 31 December 2019 and 31 January 2020) was extended until the 5th month after the end of the relevant fiscal year;
- In case of the personal income tax advances **collected by taxpayers in March and April 2020**, the obligation to pay these advances to the Revenue Office was delayed until 1 June 2020, for the taxpayers that were adversely affected by the pandemic;
- Deadline for payment of the so-called minimum commercial property tax for the period from **March to May 2020** was extended until 20 July 2020 for the taxpayers that were adversely affected by the pandemic, provided that their revenues decreased by more than 50% when compared to preceding months;
- **Implementation deadline for the new Single Audit File Tax** (Polish: *Jednolity Plik Kontrolny*) **was changed from 1 April 2020 to 1 July 2020;**
- Deadline for submitting information to the Central Registry of Beneficial Owners (Polish: *Centralny Rejestr Beneficjentów Rzeczywistych*), obligatory for the companies registered with the National Court Register (Polish: *Krajowy Rejestr Sądowy*) was **delayed until 13 July 2020;**
- Deadline for reporting transfer pricing information (**TP-R**) was extended until **30 September 2020** – for entities in the case of which the fiscal or financial year commenced after 31 December 2018 and ended before 31 December 2019;
- Deadline for notification on payment to a bank account not included in the “white list of VAT taxpayers” was extended (**from 3 to 14 days**).
- **Implementation of the new VAT matrix was postponed from 1 April 2020 to 1 July 2020;**
- Introduction of the tax on retail sales was postponed until 1 January 2021;
- Deadline for reporting tax schemes was suspended until the date of recall of the state of epidemic, no later however than until 30 June 2020;
- Three-month response period applicable for requests for issuing binding rulings was extended by another three months for all requests pending and submitted during the state of epidemic.



Amendments to the Public Procurement Law

The Anti-Crisis Shield provides for a raft of measures for protecting contractors against the loss of liquidity due to the COVID-19 pandemic, namely through:

- Introduction of the requirement to amend the public procurement contract if it is found that the circumstances related to COVID-19 affect the proper performance thereof;
- Introduction of the possibility/option to amend the public procurement contract if it is found that the circumstances related to COVID-19 affect the proper performance thereof;
- Limitation of the possibility of deducting contractual penalties from the contractor’s remuneration;

- Limitation of the possibility of claiming compensation against performance guarantee of a public procurement contract;
- Introduction of the ordering party's obligation to pay remuneration in instalments, after performing part of the public procurement contract, or to grant an advance on the performance of the contract, in the case of public procurement contracts concluded for a period longer than 12 months;
- Limitation of the performance guarantee amount in a public procurement contract.



The opportunities offered by regulations outside the "Anti-Crisis Shield"

Along with the measures prescribed by the "Anti-Crisis Shield" regulations, companies may consider exploring and utilising options provided for by other regulations, in order to optimise their financial results in the following areas:

- **Property tax:** the amendment of the Local Taxes & Charges Act, discretionary interpretations of the regulations made by various local authorities as well as changes in definitions provided for by the Construction Law, have raised the level of uncertainty regarding proper classification of the facilities and proper application of tax rates. As a result, many companies may incorrectly classify their properties for tax purposes, which may lead to overstating of tax liabilities. There is also a risk that available property tax reliefs have not been properly analysed, which may also result in overstated property tax payments;
- **Research & development tax relief:** the research and development (R&D) tax relief allows for deducting certain spending on R&D ('eligible costs') from the tax base. This solution allows for an extra deduction of eligible costs from the tax base and a reduction of income tax liability (CIT or PIT). The company aiming at using this opportunity should properly identify its R&D activities, properly structure its operating and legal model, as well as properly document its R&D activities. R&D relief effects may be strengthened by the so-called *Innovation Box*, in case of which revenues from commercialisation of the intellectual property resulting from R&D ventures are subject to lower tax rate;
- **Labour laws:** the existing labour laws allow for some flexibility in management of the employment contracts in case of emergency or crisis situations. This may involve changes in existing work by-laws, like remote work arrangements, introduction of flexible forms of employment and shift work arrangements. Such changes require proper analysis of regulations, negotiations with employees and/or trade unions, and appropriate changes to the internal by-laws;
- **Commercial leases:** apart from solutions included in the "Anti-Crisis Shield", it is worth considering regulations included in the Civil Code (*force majeure, rebus sic stantibus* clause and lease contracts' regulations), along with conditions included in the lease contracts themselves, and analyse how they affect position of both the lessee, and the lessor;
- **Contract consulting:** the pandemic may adversely affect possibility of fulfilling, e.g. due to supply chain disturbances or performance abilities of contractors or subcontractors. In such situations, there may be a need to determine what is the contractual / legal position of each of the parties involved in the non-performing contract, renegotiating the contract, concluding an annex to the contract or a temporary agreement, and - as a measure of the last resort - select defence measures or going to court. Based on a thorough analysis of the facts, contractual provisions and relevant legal provisions, we can provide comprehensive business and legal services, including definition and implementation of an individual strategy for shaping legal relationships with business partners;
- **Restructuring proceedings:** the deterioration of the company's financial situation due to a pandemic may sometimes result in entering restructuring or bankruptcy procedure. We can support our clients' assessment of their legal position in terms of the restructuring or bankruptcy laws, as well as we represent them in restructuring and bankruptcy proceedings, also in case they are creditors involved in restructuring/ bankruptcy proceedings of their debtors.