

WARSAW, SEPTEMBER 2009

## **THE LATEST CHANGES IN POLISH LAW** **NEWSLETTER**

### **BANKING LAW**

New legislation changing the Act on Bank Guarantee Fund and the Banking Law Act came into force as of 19 September 2009 (Journal of Laws No. 144, item 1176).

From that moment on, the Bank Guarantee Fund ("BGF") is not financed by the National Bank of Poland ("NBP"), whereas the deposits are financed only by the banks. The new provisions also provide for possibility of NBP granting short-term loans if BGF establishes appropriate security. This is possible provided that stability of the banking system is endangered. The newly introduced provisions guarantee appropriate performance of BGF's tasks in the scope provided for in statutory law.

The change of the Banking Law Act also introduces new rules on calculating an annual fee paid by the banks to BGF. The new provisions oblige BGF to monitor the social-economic situation and banking management systems of those banks, which are supported by BGF. The BGF Council is now obliged to present quarterly reports on BGF's operations to the Minister of Finance. Thus, BGF's duties have been significantly expanded.

Zmianie uległ również sposób powoływania przewodniczącego Rady BFG, zgodnie z którym powołanie nastąpi w drodze decyzji ministra finansów, po zasięgnięciu opinii prezesa NBP i przewodniczącego KNF. Ministrowi przyznane zostało również prawo wnioskowania w Radzie BFG o odwołanie członków jego zarządu.

### **TAX LAW**

As of 15 September 2009 new Regulation of the Minister of Finance came into force. On its basis, Attachment 7 to the Regulation of the Minister of Finance of 24 April 2008 concerning selected standard forms of declarations, statements and tax information in the scope of personal income tax (Journal of Laws No. 74, item 445 and No. 235, item 1591).

The wording of the Attachment is now changed as provided for in the Regulation. The Attachment applies to revenue, income (or loss) achieved (or incurred) starting from 1 January 2009, but excluding the situations, where the statement concerning the amount of tax premium relating to income from special sections of agricultural production (PIT-6/PIT-6L) has been submitted on a previously applicable form. In such a case, the form applicable before the date of the Regulation coming into force should be used.

## **CONSTITUTIONAL TRIBUNAL's JUDGEMENTS**

On 15 September 2009 the Constitutional Tribunal ("CT") issued its judgement (files No. P 33/07) concerning the expropriation for public roads and compensation granted in exchange for such expropriation. The CT described the nature of the decision issued by the Voivode in expropriation proceedings and such decision's relations with the time bar concerning claims for compensation for expropriation.

According to CT's judgement, the lack of an established deadline for the Voivode to issue the decision does not affect delays in the process of calculating the amount of compensation for expropriation. Furthermore, it does not relate to the deadline for compensation payment, which should be equitable – i.e. it should enable the real estate owner to restore his/her property.

It should be emphasised that the Polish Constitution does not define the „equitable compensation”. In practice, compensation is often equal to market value of the expropriated object. However, it is also possible that such compensation is higher than market value of the object and additionally covers costs (damages) involved in expropriation.

## **SUPREME ADMINISTRATIVE COURT ON DETRIMENTAL TAX COMPETITION**

On 13 August 2009 the Supreme Administrative Court ("SAC") issued its judgement (files No. II FSK 470/08), in which it contemplated the issue of revenues from paid work in connection with the place of factual management.

In the instant case, the tax bearer obtained income outside the country of residence. Polish tax authorities called the tax bearer to transfer due tax in the country of residence, due to the fact that there was no evidence of tax payment abroad. The dispute was finally brought to SAC in accordance with procedural rules.

In SAC's view, such actions of tax authorities are to be deemed as double taxation, which is undesirable in the light of Polish and most of all EU law that is also binding for Polish authorities.

*If you have any questions or doubts, please do not hesitate to contact me.*

*Yours sincerely,*

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