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WHISTLEBLOWERS CAN ALSO REPORT TAX IRREGULARITIES

The Whistleblower Protection Act, in force since September 2024, gives employees, contractors and suppliers the right to report violations of the law. Such reports may concern, among other things, irregularities that affect the financial interests of the State Treasury or local government units, including, for example, irregularities exposing taxes or duties to leakage.



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Who can be a “tax” whistleblower?

A whistleblower is anyone who, in connection with their work or the provision of services, notices a breach of the law. This therefore means that any employee, anyone working under a civil law contract (e.g. B2B), as well as anyone working for a supplier or contractor can be a whistleblower. The Whistleblower Protection Act does not require that whistleblowers act in the public interest, so reporting can also serve to protect one's own rights. A whistleblower can, for example, report that their own social security contributions or tax advances have been incorrectly calculated. A whistleblower can also be an auditor or any other person who, in a work-related context, becomes suspicious that a company is compromising the fiscal interests of the state.

What tax violations can a whistleblower report?

The law uses the general term ‘violation of the law’ concerning the financial interests of the state. Whistleblowers may report an incorrect tax assessment, the application of an incorrect rate or the provision of an untruth in any filing or declaration. In particular, relevant violations that may be reported will include tax fraud – tax evasion, a fictitious overstatement of expenses or a failure to pay taxes.

A whistleblower may also report such irregularities to the tax office or tax inspection authority. However, companies should strive to ensure that such notifications go primarily to internal organisational units. If the mistake or irregularity is detected quickly, the management will be able to avoid criminal fiscal liability by applying active contrition, **correcting the declaration or any other way of avoiding liability under the Fiscal Penal Code.**

What obligations does the employer have?

Any notification must trigger a follow-up action. This could be a tax audit, a financial audit or an investigation, whether carried out internally or by commissioning someone from outside the organisation – such as a tax advisor or lawyer. The whistleblower may not be subject to any retaliation for making a report.

EMPLOYEES' INSURANCE AT THE EMPLOYER'S EXPENSE IS TAXED

On 12 September 2024, the WSA (Voivodship Administrative Court) in Wrocław issued a judgment (ref. I SA/Wr 251/24) stating that if the employees of certain departments are covered by third-party liability insurance, which they cannot opt out of (it is not voluntary) and which does not identify in advance the group of employees covered, then this is not constitute the income of the covered employees and is not taxable.



Tomasz Kret
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In the court's view, such insurance fails to meet two of the three conditions set out by the Constitutional Court in its judgment of 8 July 2014 (case ref. K 7/13) that all have to be fulfilled in order for a gratuitous benefit to be deemed the employees' income.

On 4 December 2024, a similar case concerning employee accident insurance was decided by the WSA in Gdańsk (ref. I SA/Gd 814/24). In this case, however, the court held that the insurance, which employees cannot opt out of, should still be considered voluntary, as the employee may not have taken up employment knowing that they would be covered. In addition, the employer may indicate the employees covered and the period during which they benefit from this coverage (the period of employment).

Consequently, this insurance was considered by the court to be employee income within the meaning of the Constitutional Court judgment mentioned above.

Despite some differences in the circumstances of the two cases, it is difficult to justify such a divergence of rulings. Significantly, the judgments of the administrative courts were issued as a result of the recognition of complaints against individual interpretations issued by the Director of National Fiscal Information, who in both cases found that the insurance constitutes employees' income.

Therefore, it can be assumed that this is the current position of the tax authorities – the premium paid by the employer to insure its employees constitutes their income and should be taxed, even if this benefit does not meet the definition of a gratuitous benefit as set out by the Constitutional Court.

If it is not taxed at the level of the employees, there is a risk for the employer that a possible tax audit will lead to a challenge by the authorities. This would result in the requirement to settle outstanding tax liabilities with interest, or a long legal action with an uncertain outcome.

EQUALITY AND DIVERSITY: HOW EUROPEAN AND POLISH EMPLOYERS ARE RESPONDING TO CHANGES OVERSEAS

Businesses, in partnership with the third sector, are pioneering efforts to educate the public about equality and diversity. This collaboration plays a crucial role in promoting inclusive practices and fostering a more equitable society. This helps protect groups at risk of exclusion, is an additional voice in public debate and works to oppose harassment. Many companies in Poland reacted strongly to anti-LGBTQIA+ actions (e.g. local authorities in Poland imposing 'LGBT-free zones'). Similarly, a growing number of European companies are disassociating themselves from Donald Trump's actions targeting DEI.



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Donald Trump was inaugurated in January. Within just a few days he had sent employees of the offices of equality and diversity on enforced leave and issued executive orders ordering the withdrawal of DEI initiatives. While these were primarily aimed at the government and the public sector, they certainly have a knock-on effect on the private sector. Some US companies have begun to drop DEI activities, cut funding and redefine goals for 2025, as well as asking employees to remove gender-declaring pronouns from the footers of emails.

How are European companies, including subsidiaries or affiliates of US corporations, reacting? They are increasingly cutting themselves off from what is happening overseas. In February, the heads of leading UK consulting firms (known as the 'big four') signalled that they were going to redouble efforts on their diversity policies and actions (despite their US counterparts in the same global firms taking the opposite course).

It is important to remember that the US political, legal and cultural/social environment is different from that of Europe.

Firstly, affirmative action (which is essentially the most controversial and opposed by the Trump administration) was far-reaching in the States. In most European countries, this has not been applied on such a scale and to such an extent, due to legal restrictions. Secondly, US companies have to comply with federal law and certain guidelines (especially if they work with the public sector) and now have to try to find their way in the new reality. European entities are more independent, not bound by these laws, and subject to their own legislation and judiciary. Most European employers (including Polish) have an obligation to combat discrimination. They therefore take appropriate measures in this respect, which often intersect with DEI initiatives (training, anti-discrimination and equality policies, support and protection of groups at risk of discrimination and exclusion).

The prohibition on discrimination also means protecting employees who declare a different gender or sexual identity. In most European countries, it is difficult to imagine that employers (without being exposed to effective discrimination claims) could order employees to remove pronouns from the footers of emails in order to restore the 'biological truth' (i.e. that there are only two genders other than female and male). Besides, without DEI policies and initiatives, it is difficult today to retain talent and attract quality candidates. A British study shows that, when choosing a job, 68% of Millennials and Gen Z representatives think it is important whether the company promotes diversity among leaders (in the States, this only matters to 57% of respondents).

EMPLOYERS SHOULD PERFORM AN ANALYSIS OF OCCUPATIONAL HEALTH AND SAFETY CONDITIONS. IT IS WORTHWHILE TO MAKE A CHECKLIST OF ITEMS TO BE VERIFIED

The President of UODO (Poland's Data Protection Authority) imposed two fines on the Ujastek Medical Centre in Kraków totalling over PLN 1.1 million for illegal video surveillance in the neonatology ward. The cameras, which patients and staff were not informed about, recorded intimate moments between mothers and newborns. In addition, the hospital reported that memory cards with recordings had been lost and were not properly secured.

Monitoring in the workplace must be regulated in a collective agreement, work regulations or a notice. The provisions must clearly set out: the purpose, scope and method of use of the monitoring. Monitoring of sanitary facilities, cloakrooms, canteens or smoking rooms is prohibited. The areas to be monitored must be visibly and legibly marked. Confirmation that the employee has read the employer's monitoring policy is kept in the personnel file.

It is a good idea to review internal policies on the use of monitoring.



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MINIMUM GROSS MONTHLY SALARY THRESHOLD FOR BLUE CARD APPLICANTS INCREASES TO PLN 12,272.58

In 2025, foreigners applying for a temporary residence permit to work in a highly skilled occupation (Blue Card/EU Blue Card) must demonstrate that their gross monthly salary is at least PLN 12,272.58.

This is an increase of PLN 1,539.36 compared to the 2024 threshold. The higher amount of minimum salary also applies to applications submitted from 1 January 2024. Foreigners who are in the process of applying for a Blue Card should make sure that they still meet the condition of achieving the required salary. If their salary is below the minimum threshold, they will receive a negative decision. The gross amount of PLN 10,733.22 applies to proceedings started before 2024.

The increase in the minimum salary required to obtain an EU Blue Card results from the announcement by the President of Statistics Poland of the average salary in the national economy for 2024, which amounted to PLN 8,181.72 gross. A condition for granting a Blue Card is to demonstrate that the foreigner's remuneration is at least 150% of the amount of the average remuneration in the national economy from the year preceding the application.

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