

**PRESS RELEASE****RELIABLE SPENDING OF FINANCIAL AID WILL PROTECT ENTREPRENEURS FROM SUBSIDY FRAUD PENALTIES**

**Warsaw, 6 May 2020 – Aid for companies within the framework of the anti-crisis shield is expected. Great care should be taken when filling out applications and later when spending the acquired funds. Mistakes by entrepreneurs may result in multi-million euro fines and even imprisonment – points out Arkadiusz Matusiak, a former prosecutor and expert in the field of fiscal-criminal liability who heads the White-Collar Crime team in the Warsaw office of Wolf Theiss.**

Within the framework of the COVID-19 regulations, Polish entrepreneurs have the possibility of obtaining a subsidy to cover 3 months' wages for their employees. Work is underway on regulations that would grant subsidies to cover interest on loans, as well as liquidity, preferential and investment financing from the Polish Development Fund (Polski Fundusz Rozwoju, PFR). The value of the program for large companies is PLN 25 billion (EUR 7.66 billion), and the assumed amount of non-returnable funds may reach PLN 12 billion (EUR 2.62 billion). However, qualifying for the subsidies requires entrepreneurs to meet a number of conditions, such as maintaining employment figures at pre-pandemic levels.

"The simplified procedures to apply for and obtain the subsidies encourages their use. On the other hand, the limitation of time and determination to maintain liquidity or continuity of production can be quite a challenge for entities not experienced in obtaining financial aid. Mistakes made during the application process and while spending the funds may become very costly. Furthermore, each crisis means an increase in the grey market, so we can expect that the announced controls will be intensified, meaning increased scrutiny of both the information contained in applications and the spending of financial aid. We are already being approached by entities that need professional services in terms of minimizing risks for managers, especially since for many companies the anti-crisis shield may be their first experience in obtaining state aid," says Arkadiusz Matusiak.

What is important, as Arkadiusz points out, is that the anti-crisis shield does not provide for the suspension of fiscal control in companies. The National Revenue Administration (Krajowa Administracja Skarbowa, KAS) operates normally and continues to conduct proceedings, although the course of deadlines and all court proceedings have been suspended, at least until the implementation of subsequent stages of the so-called "de-frosting of the economy".

"Much will depend on interpretation and practice, but when irregularities are reported and a reasonable suspicion of a fiscal offense or misdemeanor is raised, the authorities of the KAS are obliged to initiate proceedings. When irregularities are reported, the investigation is therefore initiated almost automatically," the

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White-Collar Crime team leader emphasizes.

Articles 297 and 286 of the Criminal Code, which provide for penalties for so-called subsidy fraud and the misuse of property, may apply to irregularities related to the acquisition and disbursement of funds under the anti-crisis shield. Courts in such cases most often impose a combination of prison sentences and fines, but what is important, they order the offender to rectify damages and return the unduly collected amounts.

"Investigations under both articles are initiated ex officio. That is why it is so important to spend the subsidies according to their purpose. It is easy to imagine that instead of wages, part of the money will be spent on other commitments, which may pose a real risk for managers who approve payments. The situation will be even more serious if during an inspection or investigation it is proven that incorrect or insufficient documentation has been drawn up or a false statement was made during the application stage, for example, in order to achieve personal financial gain. Then prison sentences and high fines may be applied, which may reach a maximum of PLN 6 million (EUR 1.3 million)," adds Arkadiusz Matusiak.

The implementation of procedures that will make it impossible to disburse funds for purposes other than those provided for in the act will be crucial.

"Managers are liable with all their assets, which may prove insufficient to satisfy claims arising from liability for prohibited acts, especially in cases where large value subsidies have been granted. According to the PFR, the maximum, partially non-refundable preferential financing for large companies may amount to PLN 750 million (EUR 164.8 million). For example, the Ministry of Family, Labour and Social Policy informed that Meble Black Red White received PLN 1.78 million (EUR 391,000) in aid to protect jobs, Decathlon – PLN 1 million (EUR 220,000) and TC Debica – PLN 5.51 million (EUR 1.2 million). This shows the scale of fiscal responsibility for managers. On the part of entrepreneurs, we should expect an increase in activities aimed at securing internal processes, also with the support of professional advisors. Not every enterprise will be able to prepare appropriate regulations or strengthen the security of payment authorization on its own. On the part of the legislator, we can expect acceleration of work on regulations concerning the liability of collective entities for acts prohibited under the threat of penalty. The latter will strengthen the bodies of KAS in actions against dishonest entrepreneurs and will allow KAS to demand payment of damages or fines from not only managers but companies as well," summarizes Arkadiusz Matusiak.

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