



Withholding tax (WHT)

Consultations on the direction of changes in the new withholding tax rules

On November 4, 2019, we had the pleasure to participate in the meeting organized by the Ministry of Finance as part of consultations regarding the considered changes in the withholding tax (WHT) rules in Poland, i.e. the rules for collecting withholding tax on payments made abroad in respect of interest, royalties, dividends and the purchase of broadly understood intangible services. As part of the meeting, the main assumptions of changes to WHT regulations considered by the administration were presented.

The most important assumptions of the changes under consideration:

1. **Limitation of the obligation to payment and the subsequent refund of withholding tax (or submission of the applicable management declaration) only to payments to related parties and only to payments of a passive nature (dividends, royalties and interest).** In this regard, the Ministry is considering whether to introduce a separate definition of a related party for the purposes of WHT, or whether to keep using the current definition used for the purposes of transfer pricing.

2. **Specifying the due diligence requirements in the contractor's verification process** (especially for the payments for intangible services). In this context, the Ministry is considering various options, from a return to the requirement to have a certificate of tax residence only to introducing the so-called "whitelist" of payment recipient countries to which certain simplifications and presumptions may apply. Work in this area will be continued.
3. **Extending the possibility of obtaining an advanced opinion** in withholding tax to cases of payments benefiting from preferences arising from double tax treaties (and not only Directives as per the current legislation).
4. **Limiting the number of persons signing the statement to apply preferential treatment** - the statement regarding not collecting withholding tax will be signed by the head of the entity in accordance with the rules of representation of the entity (and not by all members of the management board) and it shall have a longer validity period.
5. **Shortening the tax refund deadline** within the return mechanism up to 3 months (instead of the current 6 months). Potentially shortening the deadline would also apply to obtaining of an advanced opinion in WHT.
6. **Changes to the definition of the beneficial owner.** The Ministry has not fully presented the directions of these changes; works in this area is to be continued. The changes could be aimed at bringing this understanding closer to the legal doctrine developed under double taxation treaties. Unfortunately, the Ministry does not expect to specify the conditions of the beneficial owner for holding companies (despite repeated demands in this respect).
7. **Modification of fiscal penal liability rules** by eliminating the penalty of prison sentence from the catalogue of sanctions for giving wrongdoing or concealing the truth in statements made pursuant to the provisions on the withholding tax.

Next steps

The Ministry predicts that the amendments to the regulations under consideration will most likely be adopted in the first quarter of 2020. The possibility of introducing these changes retrospectively from January 1, 2020 is under analysis.

According to the Ministry, 2019 should be treated as a transitional period and a general tax ruling should be issued with regard to the application of the provisions during this year. In particular, such general interpretation could include criteria for the fulfilment of due diligence requirements.

After the regulations are changed, the Ministry will issue the final version of tax explanations regarding the principles of withholding tax collection. At the same time, the Ministry emphasized that it is still open to further proposals for legislative changes in the field of withholding tax.

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