



Amendment to the Polish Deal signed by the President with significant changes to the Corporate Income Tax laws

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The bill amending the CIT Act and certain other acts, passed by the Polish Parliament on 7 October, has been signed by the President.

Some of the proposals put forward by entrepreneurs, tax advisors and industry organizations during the legislative process have been taken into account – the most welcome are: exemption from the minimum income tax until the end of 2023, repeal of the provisions on the constructive dividend and waiver of the obligation to prepare a TP local file for the so-called indirect transactions with tax haven entities.

We are glad to present you the below summary of the key changes. Most of them will enter into force on 1 January 2023.





Adopted changes

Constructive dividend

One of the most important changes is the repeal of the provisions introducing taxation of the so-called constructive dividend, which were adopted as part of the Polish Deal and were set to enter into force on 1 January 2023. In the explanatory memorandum to the draft amendment, the Ministry of Finance (MF) pointed out numerous doubts as to the interpretation of the relationship between the provisions on constructive dividend and transfer pricing regulations and the potentially negative impact on the functioning of capital groups.

Minimum income tax

The legislator decided to extend the original period of the exemption from minimum income tax to two years – the levy will not be payable for the period from 1 January 2022 to 31 December 2023.

In addition, the amendment provides for a change in the construction of the minimum tax by:

- increasing the profitability ratio to two percent while modifying its calculation methodology so that: tax-deductible expenses will not include: fixed assets lease payments; 20 percent of salary and social security contribution costs; and revenue and tax-deductible expenses will not include trade receivables sold to factoring companies,
- lowering the taxable amount;
- introducing an alternative method to determine the taxable amount – at the taxpayer's option;
- extending the list of taxable persons excluded from the minimum taxation by i.a.: municipal companies, taxpayers that generate their revenues mainly in the healthcare sector, small taxpayers, taxpayers whose profitability in one of the past three years exceeded the two-percent ratio and those declared bankrupt, placed in liquidation or undergoing restructuring, as well as financial institutions.

Despite the abovementioned exemption from the minimum tax until the end of 2023, taxpayers are recommended to continue to closely monitor the regulation due to its potential negative impact, especially in low-margin industries.

Transfer pricing obligations

A change that is undoubtedly beneficial is the complete repeal of Article 11o.1a and 11o.1b of the CIT Act which obliged taxpayers to prepare transfer pricing documentation for indirect transactions with tax haven entities.

The regulations are repealed retroactively, i.e. as of the fiscal year beginning after 31 December 2020.

Furthermore, tax thresholds for the transactions conducted directly with tax haven entities will rise to:

- PLN 2.5m for financial transactions; and
- PLN 0.5m for other transactions.

Taxation of shifted income

As part of the amendment, the legislator added provisions to clarify the condition for applying the shifted income regulation to the preferential taxation of the shifted income. The condition will be satisfied, if under the tax laws of the related entity's country of residence, management, registration or location, the entity's income (revenue) from sources explicitly mentioned in the provision (e.g. payment for intangible services, fee for the use of intangible assets) is subject to:

- income tax at a rate lower than 14.25 percent or
- tax exemption/exclusion.





The lower tax rate does not concern the tax actually paid, calculated based on all the economic activities or the total income of the related entity, but refers to the related entity's revenue from one of the sources specified in Article 24aa.3 of the CIT Act.

The main objective of changes in the tax on shifted income is to clarify the regulations to dispel doubts over the interpretation of the laws. The changes:

- provide that only tax-deductible expenses will be subject to tax;
- clarify that the related party for which the shifted income has been incurred is a non-resident entity;
- clarify the condition regarding the 50 percent of revenue generated by the related entity and the condition that income is shifted to another entity (at least 10 percent);
- impose the rule of application of the provisions governing the tax on shifted income to specific arrangements involving tax transparent entities or foreign entities that shift income to other foreign entities that benefit from low tax rates.

The conditions for considering costs as shifted income will automatically be considered fulfilled, if the costs have been incurred for the benefit of a related party having its seat, place of management or registration in the territory which use harmful tax competition or with which Poland or the EU has not ratified the agreement constituting the basis for the exchange of tax information, if such entity is not the taxpayer's controlled foreign company and its revenues have not been taxed in Poland.

The provisions on shifted income should be monitored primarily by capital groups which run shared services centres in tax jurisdictions with favourable taxation rules.

Withholding tax

Beneficial changes – particularly for tax remitters – have also been introduced in the area of withholding tax (WHT) regulations. They concern i.a.:

- WH-OSC statements, which allow for an exemption from the pay and refund mechanism – the original statement will be valid until the end of the tax year in which it was submitted (currently it is valid only until the end of the second month after the month in which it was submitted); the subsequent declaration will be submitted after the end of the tax year,
- exclusion of the application of certain obligations of broadly understood tax remitters (i.e. both the issuer as remitter in the strict sense and the entity being the so-called technical payer) in the scope of withholding tax on interest and discount on Treasury securities (i.e. treasury bills and bonds).

The above changes will eliminate some of the burden of the pay and refund mechanism in capital groups, in which payments of dividends, interest and royalties are made on a regular basis.

Polish holding company

Some positive changes have been made to the Polish holding company (PSH), a new type of company introduced on 1 January 2022. Alongside simple changes to the definition of PSH and extension of the list of legal entities to use the PSH regime to include a simple joint-stock company, the amendment also:

- provides for the combination of the PSH preferences with exemptions under the Parent-Subsidiary Directive,
- allows the subsidiary to hold more than five percent of shares or rights and obligations in other companies or partnerships,
- allows a domestic subsidiary to benefit from the income tax exemption intended for Special Economic Zones and the so-called Polish Investment Zone,
- exempts the entire dividend paid to PSH from tax (the current regulations provide for a 95-percent exemption).

The legislator decided also to extend the period in which the conditions laid down in the provisions must be met in order for the PSH regime to apply, from one year to two years.

Despite the adverse change regarding the period in which the conditions must be met, PSH remains an interesting and beneficial solution for taxpayers, especially with the cascade structures that can be created under the PSH regime starting from 1 January 2023 and the possibility to combine them with economic and investment zone exemptions.

Polska spółka holdingowa

Korzystne zmiany czekają podatników także w przepisach regulujących nową instytucję, obowiązującą od 1 stycznia 2022 r., tj. w polskiej spółce holdingowej (PSH). Poza zmianami definicyjnymi i wprowadzeniem prostej spółki akcyjnej do katalogu podmiotów, które mogą korzystać z reżimu PSH, nowelizacja zakłada także m.in.:

- umożliwienie łączenia preferencji przewidzianych dla PSH ze zwolnieniami z dyrektywy Parent-Subsidiary,
- dopuszczenie, aby spółka zależna mogła posiadać więcej niż 5% udziałów (akcji) lub ogółu praw i obowiązków w innych podmiotach,
- dopuszczenie, aby krajowa spółka zależna mogła korzystać ze zwolnienia w podatku

Estonian CIT

The amendment also changes the regulations on the flat-rate tax on the income of companies, known popularly as the Estonian CIT. The most important of them is the change in the rules for determining income from expenses unrelated to business activity in case of using assets for business and other purposes.

For example, if a taxpayer uses a company car for business and personal purposes, the Estonian CIT is charged on the half of the value of a given asset and on the half of operating expenditures, up to that amount the expenditure will not be considered to be business related. The change is consistent with the interpretation of the laws by the Director of the National Revenue Information in the tax rulings issued so far.

Apart from the above, there are some other technical changes or clarifications:

- change of the time limit for filing the notification of the selection of the Estonian CIT (ZAW-RD);
- clarification that tax liabilities arising from the initial adjustment expire in whole after the end of at least one full flat-rate taxation period (i.e. four fiscal years);
- specification of an exact deadline for payment of tax on income from transformation;
- postponement of tax due dates for the tax on income from distributed profit and income from profit intended to cover losses, as well as the tax on distributed net profit income.

Controlled Foreign Company

The changes adopted in the area of Controlled Foreign Companies (CFC) are primarily intended to clarify:

- the condition of a foreign company's high profitability relative to its assets in case the assets have been disposed of throughout the year,
- the rules for reducing the tax due by the amount of the tax paid by the subsidiary,
- the rules for attributing revenues and costs in order to determine the income of a CFC, and
- adding a direct indication that tax reliefs and exemptions from the CIT Act do not apply to controlled foreign companies except for those specified in the provisions on CFC.

Debt financing costs

The amendment covers also the regulation on including debt financing expenses in tax deductible costs. In this respect:

- the legislator has clarified the amount of debt financing costs that should be excluded from tax-deductible expenses i.e. the amount exceeding: PLN 3m or 30 percent of Tax EBITDA, whichever is higher;
- the provisions on excluding debt financing expenses incurred for the purpose of capital transactions from tax deductible costs will not apply, if the debt financing has been provided by a bank or a credit union having its seat in an EU member state or in an EEA country or if the debt financing has been used for acquiring shares in a non-related entity.

The amended provisions will apply to debt financing costs incurred starting from 1 January 2022 and in case of taxpayers whose tax year does not coincide with the calendar year – starting from the tax year beginning after this date.



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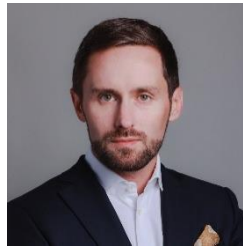
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