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Deloitte Poland Tax News for Financial Institutions

The Ministry of Finance announces another package of tax changes related to the Polish Deal, this time in corporate income tax (CIT)

Minimum CIT (Article 24ca of the CIT Act)

Provisions regarding the minimum CIT shall not come into force until the end of 2022. Additionally, the CIT structure shall be modified as follows:

- The profitability ratio shall be increased to 2%, and its calculation method modified: lease payments shall be excluded from tax-deductible expenses; Trade receivables sold to factoring companies shall be excluded from revenue.
- An alternative method of determining the tax base for minimum CIT shall be introduced.
- The list of taxpayers qualifying for the minimum CIT shall be extended (among others to include municipal companies, taxpayers that generate revenue mainly in the healthcare sector, small taxpayers, and entities whose profitability in one of the last three years exceeded the ratio of 2%, as well as the ones declared bankrupt or put in liquidation in the same period).

Most financial institutions will not qualify for minimum CIT.

Deleting "hidden dividend" provisions (Article 16.1(15b) of the CIT Act)

The "hidden dividend" provisions will be removed.

Amendments to provisions on tax on shifted income (Article 24aa of the CIT Act)

The proposed changes are to:

- ensure that the tax is limited to cost items classified as tax-deductible expenses;
- clarify that the related party in relation to which the costs are incurred (i.e. to which income is shifted) has no registered seat or head office in Poland;;
- clarify the condition regarding 50% of revenue generated by the related party and the condition of transferring revenue to another entity (at least 10%);
- simplify the condition regarding preferential tax treatment in the related party's country;
- introduce rules allowing appropriate application of the provisions regarding the tax on shifted revenue to specific arrangements with participation of tax-transparent entities or with foreign entities that transfer their revenue to other foreign entities that benefit from low tax rates.

Amendments to debt financing costs limitations (Article 15c of the CIT Act)

The changes planned in this regard are aimed to:

- specify precisely the debt financing cost limit is the higher of (i) PLN 3 million or (ii) 30% of the tax EBITDA (this limitation is not applicable to most financial institutions);
- provide an exemption from the provisions setting the limit on debt financing costs for equity transactions in situations where a bank or a credit union having its registered seat in an EU member state or in an EEA country is the financing institution. Additionally, these provisions would not apply to debt financing provided for the acquisition or subscription of shares or all the rights and obligations in entities that are unrelated to the taxpayer.

Amendments to withholding tax (WHT)

The changes planned in this regard concern primarily payouts, which are made through securities accounts or through omnibus accounts. These changes are aimed to:

- provide an exemption from some obligations imposed on payers in a broad sense (i.e., both issuers as payers in the narrow sense and entities being the so-called technical payers) with regard to withholding tax on interest and discount on treasury securities (i.e. treasury bills and bonds);
- increase the flexibility of the structure (extension of the period) of the payer's declaration in case of entities making payouts excluding the obligation to apply the pay & refund mechanism (submission of such a declaration would be sufficient to not apply the mechanism for the next whole year versus three months at present).

Amendments to the provisions applicable to the Polish holding company (PSH)

The changes planned in this regard are aimed to:

- modify definitions relevant for PSH;
- clarify provisions, for example those applicable to the one year during which the holding company holds shares in subsidiaries;
- add a simple joint-stock company to the list of entities that are authorized to operate in the PSH regime;
- grant the right for a holding company to use the CIT exemption for dividends under the EU Parent-Subsidiary Directive;
- allow domestic subsidiaries to claim the exemption provided for SEZ or the Polish Investment Zone, under the PSH regime;
- introduce a 100% dividend WHT exemption for entities in the PSH regime (vs. 95% at present).

Amendments to regulations applicable to controlled foreign companies (CFC)

The changes planned in this regard are aimed to:

- eliminate multiple taxation of CFC in the case of cascading dividend payments within holding structures;
- clarify the current wording of the CFC regulations concerning:
- the condition of a foreign entity's high profitability relative to its assets (re: asset disposal transactions concluded throughout the year); and
- definition of a subsidiary for CFC purposes.

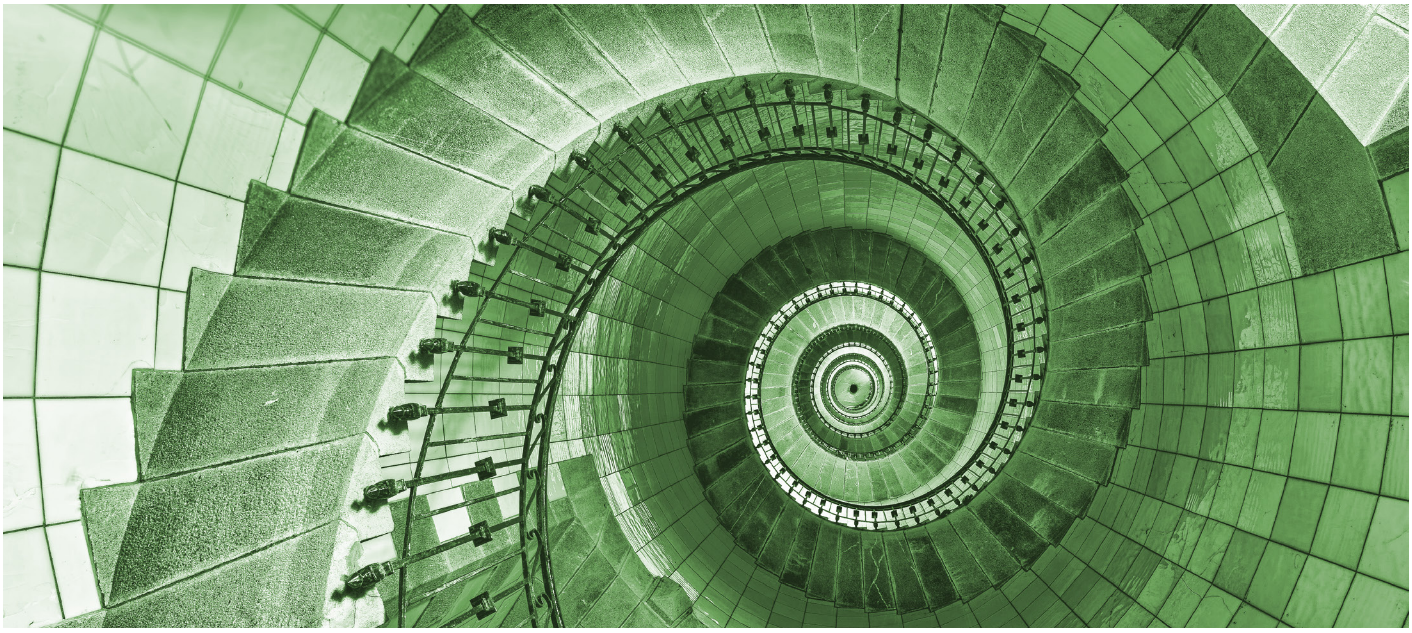
Amendments to the regulations applicable to TP documentation for transactions with tax havens (Article 11o of the CIT Act)

The changes planned in this regard are aimed to:

- modify the scope of the documentation obligation for indirect tax haven transactions;
- eliminate the presumption that the beneficial owner has its place of residence in a tax haven;
- increase materiality thresholds for direct and indirect tax haven transactions, which – if exceeded – give rise to the tax obligation.

Other planned tax changes are aimed to:

- set out more detailed provisions applicable to loss reporting by entities that comprise a tax capital group (fiscal unity);
- modify the provisions regarding publication of tax forms and tax returns by the Minister of Finance;
- specify rules for classification as tax-deductible costs of social securities contributions associated with revenue under the employment contract and equivalent, in the part sponsored by the payer, contributions to the Labor Fund, the Solidarity Fund and the Guaranteed Employee Benefits Fund;
- modify the provisions governing the refund procedure for tax on revenue from buildings, consisting in reformulation and consequently, simplification of the said procedure by request, as referred to in Article 24b.15 and 16 of the CIT Act;
- changes are also planned to be introduced to other legal acts, including the Tax Code and the PIT Act.



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