



Withholding tax (WHT)

Application of the new rules postponed till 30 June 2020

30 December 2019 saw the publication of the Regulation of the Minister of Finance amending the Regulation on the exclusion or restriction of the application of Article 26(2e) of the Corporate Income Tax Act. In accordance with the amended Regulation, the temporary exclusion of the application of Article 26(2e) of the CIT Act is extended until 30 June 2020 (within the scope not originally covered by indefinite exclusion).

Obligation to levy WHT

The amendment to the CIT Act (and the PIT Act) that came into effect on 1 January 2019 **obliges the remitter to levy WHT if the payments subject to WHT made to one taxpayer exceed PLN 2m** (Article 26(2e) of the CIT Act). In such cases, in order not to collect the tax or collect the tax at a reduced rate on the amount above the PLN 2m, the tax remitter, apart from satisfying the prerequisites for a WHT exemption or a lower WHT rate under the CIT Act or a relevant double tax treaty, will need to:

- make the relevant statement, or
- obtain a WHT clearance opinion (only in specific cases).

However, in line with the Regulation of the Minister of Finance, the application of the provision of Article 26(2e) was temporarily excluded - first until 30 June 2019 and then until 31 December 2019 (an indefinite exclusion has also been applied to selected types of payments). **According to the Ministry of Finance's Regulation, the applicability of Article 26(2e) of the CIT Act is to be excluded further, i.e. until 30 June 2020.**

Consequences for taxpayers

CIT remitters can apply WHT exemptions and lower WHT rates without the need to make a statement and obtain a WHT clearance opinion, even if their payments do exceed PLN 2m in total over the tax year. Generally speaking, the postponement is in line with the overall policy of the Ministry of Finance which aims to temper the regime.

Other regulations concerning withholding tax (especially the duty to exercise due care and the new definition of a beneficial owner) remain unchanged and in force.

Postponing the introduction of the new WHT regime should allow CIT remitters to **accurately verify their right to apply WHT relief** (WHT exemption / lower WHT rate), in view of the suggestions included in draft clarifications (i.e. the status of the taxpayer and the beneficial owner as well as genuine business activity), **as well as obtain individual tax rulings or WHT clearance opinions - all before the first payments under the new regulations are made in 2020.**

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