



## Deloitte Poland Tax News for Financial Institutions | December 2020

### Polish tax agenda for December 2020 and the beginning of 2021

The end of a calendar year (in Poland the calendar year commonly coincides with the fiscal year) and the beginning of a new one are always full of tax and compliance obligations. Here are some of the key tax-related deadlines that apply to Polish businesses in December 2020 and the first quarter of 2021:

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#### Transfer pricing

Taxpayers should have their local file (transfer pricing documentation) for 2019 prepared by December 31, 2020.

Furthermore, within the same deadline, taxpayers are obliged to file the following documents electronically:

- their transfer pricing information for 2019 in the form of the TPR-C return (to be submitted to the Head of the National Revenue Administration which is Polish tax authority), and
- a statement confirming that the local file for 2019 is actually ready and the transfer prices are arm's length (to be submitted to the competent tax office).

#### December 31, 2020

The statement for 2019 should be signed by the persons authorised to represent the taxpayer (e.g. by two board members jointly authorised to represent a company, or by a branch director), but not by a proxy / an attorney.

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### MDR / DAC6

Under mandatory disclosure / DAC6 regulations, intermediaries are obliged to electronically file information on reportable cross-border arrangements the first step of which was implemented between June 26, 2018 and June 30, 2020. Those tax schemes should be re-submitted by December 31, 2020, also those that had been already reported before 2020.

#### December 31, 2020

Since January 1, 2021 deadlines regarding taxable cross-border arrangements begin to run again (they were all suspended on June 30, 2020).

Deadlines regarding domestic taxable arrangements will continue to be suspended (until the state of epidemic emergency in Poland is revoked).

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### CIT

A general partnership (in Polish: "spółka jawna"), where not all of its partners are natural persons, becomes a CIT payer (tax opaque) on January 1, 2021, unless it submits information on all its partners to the tax office by February 1, 2021.

General partnerships that want to stay tax transparent in 2021 should disclose that information.

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### CIT

Taxpayers entitled and wanting to choose the so-called Estonian tax for 2021 and onwards (undistributed corporate profits are then tax exempt; 10-25% CIT is postponed until the profits are distributed as dividends or deemed to be distributed) should inform the tax office about their choice by February 1, 2021.

#### February 1, 2021

(January 31, 2021 is a Sunday)

Financial institutions or companies with non-individual shareholders are not entitled to choose that type of corporate income taxation.

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### CIT / PIT

By February 1, 2021, tax remitters should submit electronically to tax authorities their returns on CIT (CIT-6R and CIT-10Z forms) and on PIT (PIT-4R, PIT-8AR, PIT-8C, PIT-11 forms) withheld in 2020.

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### MDR / DAC6

Under mandatory disclosure / DAC6 regulations, taxpayers (beneficiaries) are obliged to electronically file information on reportable cross-border arrangements the first step of which was implemented between June 26, 2018 and June 30, 2020 – that obligation should be fulfilled by taxpayers by February 1, 2021, in case an arrangement has not been reported by another entity.

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### Payment backlogs

Tax capital groups and CIT taxpayers that exceeded the equivalent of EUR 50m in revenues in the previous financial year should submit a report on the payment dates applied in 2020 electronically to the Minister of Economy, by February 1, 2021.

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### VAT

#### February 25, 2021

The deadline to submit VAT return for January 2021 and to reconcile input VAT for the whole 2020 with the final VAT ratio / pro-rata calculated for 2020.

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### MDR / DAC6

Under mandatory disclosure / DAC6 regulations, auxiliaries (supporters) are obliged to electronically file information on reportable cross-border arrangements the first step of which was implemented between June 26, 2018 and June 30, 2020 – that obligation should be fulfilled by auxiliaries / supporters by March 1, 2021, in case an arrangement has not been reported by another entity.

#### March 1, 2021

(February 28, 2021 is a Sunday)

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### PIT

By March 1, 2021, tax remitters should submit electronically to tax authorities their returns on payments to individuals being foreign tax residents (IFT-1R form).

Tax remitters should also submit certain PIT returns to individuals (PIT-11, PIT-8C forms) by March 1, 2021.

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## CIT

By March 31, 2021, taxpayers should submit electronically their annual CIT returns (CIT-8 form) for 2020.

Real estate-rich companies are obliged to submit information for 2020 regarding their shareholders holding 5% or more shares. Such information should be filed electronically to the Head of the National Revenue Administration.

## March 31, 2021

### CIT and other

By March 31, 2021, tax remitters should submit electronically to tax authorities their returns on 2020 payments to non-individual foreign tax residents (IFT-2R form) and on agreements concluded with foreign entities in 2020 (ORD-U form).

### Country-by-country reporting

Polish entities (incl. branches) which are a part of multinational enterprises obliged to do country-by-country reports (CbCR) should file a CBC-P notification (indication which entity will do CbCR) within 3 months after the end of a financial year for which consolidated financial statements are prepared.

## Key tax changes in Poland in 2021

Below we present selected, key changes in the Polish tax environment coming into force as from January 1, 2021:

- limited partnerships (in Polish "*spółka komandytowa*") become CIT payers on January 1, 2021 (tax opaque), and they are subject to CIT based on the same rules as, for example, limited companies. In exceptional circumstances, a limited partnership may decide to become a CIT payer on May 1, 2021 (so it will be tax transparent until April 30, 2021). Becoming a CIT payer by a limited partnership involves an obligation to close its accounting books;
- a general partnership (in Polish "*spółka jawna*") may become a CIT payer (tax opaque) on January 1, 2021, if not all of its partners are individuals and not all of its partners are disclosed to tax authorities. Other general partnerships will still be tax transparent;
- tax capital groups and CIT taxpayers that have exceeded the equivalent EUR 50m in revenues are obliged to prepare and publish information on the execution of their tax strategy for the tax year. The first information should concern 2020 and be published by December 31, 2021;
- real estate companies (i.e. companies in which 50% or more assets derive from real estate located in Poland) become tax remitters (tax remitter is an entity obliged to settle CIT) on the sale of shares in that real estate company. The amendment also imposes a number of other obligations on real estate companies, such as the obligation to appoint a tax representative in specific cases and the obligation to provide information on shareholders in real estate companies;
- limiting the possibility of utilizing tax losses by taxpayers that have taken over the assets of other entities constituting an enterprise or an organised part thereof as a result of a merger, in-kind contribution or purchase financed by a cash contribution. As a consequence, there will be no possibility to use the tax losses of an enterprise that is unable to settle them;
- taxation of the division of assets of a liquidated legal person. The amendment equates taxation of the handing over of the assets of the liquidated company with the sales transaction. As such, this regulation has been introduced in response to the current disputes between the tax authorities and taxpayers concerning the application of Article 14a of the CIT Act in the event of the division of property of a liquidated legal person;
- starting from 2021, Polish companies will be allowed to choose the so-called Estonian solution in Corporate Income Tax (CIT), i.e. CIT taxation of corporate profits will be postponed until the profits are distributed (i.e. no CIT will be due as long as companies' earnings are reinvested). However, considering the criteria to be met in order to use that solution (for example, only companies with an annual turnover up to PLN 50m / ca. EUR 11m/, solely with shareholders being natural persons and with no shares in other companies are eligible), it will be unavailable to financial institutions;
- an obligation to prepare the local file for transfer pricing purposes will cover also transactions over PLN 500 000 (ca. EUR 112 000) concluded with unrelated parties whose beneficial owner is located in a tax haven. Taxpayers are obliged to exercise due care to determine that condition;
- ATAD 2 (hybrid mismatch arrangements) is implemented into the Polish law as from January 1, 2021. The amended provisions indicate cases in which, in principle, taxpayers will not be entitled to tax deductibility if their payment results in:
  - double deduction - consisting primarily in multiple recognition of costs on the same basis in different countries, without the corresponding indication of income in these countries,
  - deduction without tax (deduction / no inclusion) – consisting in the recognition of the benefit as tax costs without the corresponding recognition of that benefit in the income in the recipient country;
- Poland introduces so-called sugar tax, charged on non-alcoholic drinks containing added sugar, caffeine, or taurine;
- Poland introduces retail tax. Retailers will be required to pay tax on their monthly turnover from the sale of goods to consumers where turnover exceeds PLN 17m (approximately EUR 3.8m), at the rate of 0.8% on turnover between PLN 17m and 170m and at the rate of 1.4% for the portion of monthly turnover above that.

## Contact us:



**Jakub Żak**

Partner

Tax Advisory Department

e-mail: [jazak@deloitteCE.com](mailto:jazak@deloitteCE.com)

tel.: +48 513 136 220



**Agnieszka Ostrowska**

Partner Associate

Tax Advisory Department

e-mail: [aostrowska@deloitteCE.com](mailto:aostrowska@deloitteCE.com)

tel.: +48 604 949 986



**Przemysław Skorupa**

Director

Tax Advisory Department

e-mail: [pskorupa@deloitteCE.com](mailto:pskorupa@deloitteCE.com)

tel.: +48 502 788 720

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