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CRS audits of Polish reporting financial institutions

Financial institutions (e.g. banks, life insurers, mutual funds and brokerage houses) are obliged to implement and follow reporting and due diligence rules which are consistent with those set out in the Common Reporting Standard (CRS) developed by the OECD (under the EU Directive 2014/107, commonly known as 'DAC2').

Now Polish tax authorities have started to audit financial institutions in order to verify their compliance with CRS due diligence and reporting requirements. Tax authorities inspect financial accounts subject or excluded from reporting, following due diligence procedures (e.g. gather copies of self-certification statements and verify their correctness or reliability) and the proper running of registers of CRS activities.

Non-compliance may result in a fine imposed on the financial institution (up to PLN 1,000,000 / ca. EUR 223,000) and its employees being sentenced for a tax offense or a tax misdemeanour.



CIT taxation of limited partnerships and other amendments proposed for 2021

A draft amendment to the income tax laws and some other laws has been published on the Government Legislation Centre website. The draft introduces revolutionary changes in income taxes:

1. The key issue having a fundamental impact on all companies currently operating in the form of a limited partnership (in Polish: *spółka komandytowa* or *sp.k.*) is the applicability of CIT taxation to limited partnerships. According to the draft, from January 1, 2021, one-stage taxation of income from the activity of a limited partnership at the level of its partners is to be changed to two-stage taxation. A similar taxation system will apply in some cases to general partnerships (in Polish: *spółka jawna* or *sp.j.*);
2. From January 1, 2021, the new regulations also introduce a general obligation to prepare and publish a report on the implementation of a tax strategy. The obligation will apply to:
 - taxpayers whose revenues exceeded EUR 50 m in the tax year,
 - tax capital groups and its member companies,
 - real estate companies.

The scope of the report is broad and the list of the required information has an open character. In addition, although it does not result directly from the new regulations, the above obligation may necessitate preparing a corporate tax strategy in advance, as well as structuring and formalizing processes and procedures for managing and ensuring the correct performance of obligations under tax regulations. The taxpayers will now have 9 months from the annual CIT return filing deadline to publish the report. Those who fail to do so will pay an administrative fine of up to PLN 1,000,000. In practice, non-compliance may also result in penal fiscal liability.

Other solutions provided in the draft CIT Act include, among others:

- Tightening the rules on tax depreciation, particularly for entities operating based on income tax exemptions (this regulation will primarily apply to entities benefiting from tax exemptions for carrying out operations in SEZs or under support decision;
- Transfer of the tax settlement obligation on the sale of shares in real estate companies from the seller to the real estate company and new compliance obligations;
- Revisions in transfer pricing:
 - tightening and extension of the so-called anti-national regulations;
 - reduction of burdens during the pandemic:
 - exemption from the obligation to prepare documentation for a wider range of domestic transactions,
 - softening of the requirements for signing the statement;
- Limiting the possibility of utilizing tax losses by taxpayers who have taken over the assets of other entities constituting an enterprise or an organized part thereof as a result of a merger, in-kind contribution or a purchase financed by a cash contribution;
- Taxing division of assets of a liquidated legal person.

As planned, the proposed modifications will come into force on January 1, 2021. It must be stressed that further changes to the CIT law have been already announced. Therefore, we recommend that discussions be started and actions to prepare for the new regime be taken as soon as possible.

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Contact us:



Jakub Żak

Partner

Tax Advisory Department
e-mail: jazak@deloitteCE.com
tel.: +48 513 136 220



Agnieszka Ostrowska

Partner Associate

Tax Advisory Department
e-mail: aostrowska@deloitteCE.com
tel.: +48 604 949 986



Przemysław Skorupa

Director

Tax Advisory Department
e-mail: pskorupa@deloitteCE.com
tel.: +48 502 788 720