

Tax Alert

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AMENDMENTS TO THE POLISH CIT REGIME AS OF 1 JANUARY 2021

Taxation of limited partnerships

Limited partnerships with a registered office or place of management located in Poland (which, until the end of 2020, are classified as tax transparent entities) become CIT taxpayers that are subject to the standard 19% CIT rate. The after-tax profit distributed to general partners and limited partners is subject to CIT/PIT taxation at the level of 19% (subject to a reduction or exemption under the applicable DTT or Polish domestic WHT regime). General partners are to deduct a percentage of the CIT liability of limited partnerships pro-rata to their profit participation from the CIT/PIT liability incurred when a limited partnership distributes profits.

Taxation of general partnerships

General partnerships with a registered office or place of management located in Poland which partners are not only individuals, become CIT taxpayers unless the information on the participation of particular partners in a partnership's profit as of 31 December 2020 is submitted to the competent tax office. If a general partnership fails to comply with this requirement, it is subjected to CIT and its partners are subjected to CIT/PIT upon the distribution of profits according to the rules applicable to limited partnerships.

Tax strategy reporting obligation

Tax capital groups and taxpayers whose revenues exceed EUR 50m annually are required to prepare and make available to the public a report on their tax strategies for a given tax year.

The report should be prepared taking into account the nature, type, and size of a taxpayer's business and include the following information:

- a description of the taxpayer's approach to processes and procedures for managing the performance of tax law obligations;
- information on transactions with related entities whose value exceeds 5% of the balance sheet total of assets, including non-Polish tax residents;
- information on restructuring activities the taxpayer has planned or undertaken that may affect the amount of tax liabilities of the taxpayer or related entities; and
- submitted applications for the issuance of: (i) general tax rulings; (ii) tax rulings (iii) binding VAT rate information; and (iv) binding excise tax information.

Transfer pricing changes (TP)

Currently, transactions with unrelated entities established in tax havens are subject to the arm's length principle. This would also be extended to cover transactions with pass-through unrelated entities where the ultimate beneficiaries are established in tax havens. As a consequence, the taxpayers would need to determine the place of establishment of the ultimate beneficiaries of their unrelated counterparties. This may be difficult in practice.

The taxpayers will need to prepare transfer pricing local file documentation covering such transactions if the value of transactions exceed PLN 500k, and this documentation would need to include business justifications and the expected economic benefits resulting from the transactions. Further, the ultimate beneficiary would be deemed to be established in a tax haven if the direct counterparty (pass-through entity) makes any settlements with any entities established in tax havens during the respective fiscal year. The taxpayer would be required to exercise due diligence in determining these circumstances. This obligation would necessitate significant changes in taxpayers' current compliance procedures.

The documentary threshold for transactions carried out directly with unrelated entities from tax havens would remain at the current level of PLN 100k, but the actual payments made during the fiscal year would no longer be decisive.

As regards associated enterprises established in tax havens, the documentary threshold would be decreased to PLN 100k with respect to every category of transaction, regardless of the number of actual payments made in the respective fiscal year. In addition, the documentary threshold for transactions with related entities that are not established in tax havens, but the ultimate beneficiaries of the payments are established in these jurisdictions, would be decreased to PLN 500k from the current PLN 2m or 10m depending on the type of transaction.

On a positive note, during the state of the COVID-19 epidemic or with respect to a fiscal year during which a state of COVID-19 epidemic was declared, taxpayers are allowed to submit a statement on TP documentation signed by the management board member(s) under the rules of representation (currently, all the members of the management board need to sign such statement) and the taxpayers would not be required to possess a statement on TP adjustments made by their counterparty-related entity.

Real estate company as a withholding tax agent

In the case of a disposal of shares in a Polish real estate company, the obligation to settle Polish tax liability is shifted from the seller of the shares to the real estate company (i.e. target) if at least one of the transacting parties is a Polish non-resident.

The amendment introduces an obligation to appoint a tax representative in Poland if real properties are held directly by foreign owners.

A company is deemed a real estate if owned properties are mainly used for lease, tenancy, or a similar activity. If real properties are used for production or the rendering of other services, the company is not deemed to be a real estate company even if real properties represent a material part of its assets.

Commercial property tax - exemption

The amendment provides for an exemption from commercial property tax also after 31 December 2020 (the end of the current exemption period) until the state of the COVID-19 epidemic has ended.

Limitation of the possibility to settle tax losses

The amendment provides for the limiting of the possibility to settle tax losses by a surviving company in a situation where:

- such taxpayer took over another entity;
- a contribution in-kind of an enterprise / organized part thereof was made to the equity of such taxpayer; or
- a cash contribution to the equity of such taxpayer was made that was subsequently expensed for the acquisition of an enterprise or its organized part from another taxpayer.

Assets of a liquidated company

The transfer of in-kind liquidation proceeds during a liquidation procedure by a company in liquidation to its shareholder is deemed a supply against consideration. Therefore, a company in liquidation incurs taxable revenue equal to the FMV of such assets (reduced by acquisition costs less depreciation write-offs).

Increase of the income limit of the 9% CIT rate

The annual revenue threshold to apply the 9% instead of the 19% CIT rate has been increased in 2021 from EUR 1.2m to EUR 2m.

Changes in tax depreciation

Taxpayers benefiting from the CIT / PIT exemption (e.g. in relation to revenues incurred in special economic zones) are deprived of the right to modify tax depreciation rates in relation to fixed assets used for tax-exempt activities.

If you have any question related to the above issues, please do not hesitate to contact SK&S' Tax Team.



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