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Tax Controversy 2023

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Poland: Law & Practice
And
Poland: Trends & Developments

Sławomir Łuczak
and Ewelina Całczyńska
Sołtysiński Kawecki & Szlęzak

POLAND

Law and Practice

Contributed by:
Sławomir Łuczak and Ewelina Całczyńska
Sołtysiński Kawecki & Szlęzak

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Sołtysiński Kawecki & Szlęzak is an independent Polish law firm with a team of over 170 lawyers, offering legal services to businesses from Poland and abroad. SK&S has over 30 years of experience in providing comprehensive advisory services in all aspects of tax law, in the following areas: new technologies and the digital economy, taxation of personal income, merger and acquisition transactions and business and capital restructuring, tax proceedings, financial transactions, regulatory issues, compliance, VAT, excise tax and customs duties, private clients and international taxation. It is committed to the continuing professional development of its experts. This, combined with an interdisciplinary nature and the high quality of its services, enables it to advise clients on even the most difficult tax issues that pose significant challenges, as well as both legal and business risks. It offers strategic advice and finds solutions to even the most novel and complex tax problems.

Authors

Sławomir Łuczak has been an attorney-at-law and a partner in the tax practice of Sołtysiński Kawecki & Szlęzak since 2007. He specialises in tax, customs and foreign exchange law. Sławomir has broad experience in international tax law and in representing clients in tax and customs matters before tax and customs authorities and administrative courts. He advises on tax matters in restructuring and consolidation projects, and currently also leads the Private Clients practice. Sławomir is a member of the International Fiscal Association (IFA) and Association Européenne d'Etudes Juridiques et Fiscales (AEEJF). He is involved in the work of the Union Internationale des Avocats (UIA) in its two groups: the Tax Law Commission and Family Law Commission.

Ewelina Całczyńska is an associate at Sołtysiński Kawecki & Szlęzak and provides comprehensive advice on tax law, including issues such as VAT, CIT, PIT (particularly in international transactions), and real estate tax. Her advice covers tax compliance, tax planning, conducting and supervising tax audits, and implementation of tax reliefs (such as R&D relief). Ewelina has provided tax advice in numerous transactions in the real estate and financial markets.

Sołtysiński Kawecki & Szlęzak

Jasna 26
00-054 Warsaw
Poland

Tel: +48 22 608 70 00
Fax: +48 22 608 70 70
Email: office@skslegal.pl
Web: www.skslegal.pl

1. Tax Controversies

1.1 Tax Controversies in This Jurisdiction

In Poland, tax controversies arise in various ways. Generally, they are detected during tax audits, tax proceedings, and customs and tax audits conducted by the tax authorities. Tax controversies also usually arise because of submitting tax returns late or failing to submit a tax return. It should be added that tax controversies of an individual taxpayer may arise due to:

- information provided by another tax authority (including foreign tax authorities); or
- information appearing in internal systems to which the tax authorities have access.

1.2 Causes of Tax Controversies

Generally, value added tax (VAT), corporate income tax (CIT) and personal income tax (PIT) give rise to most tax controversies in Poland. According to the Polish Ministry of Finance, from January to June 2022, the National Fiscal Administration:

- initiated 8,486 tax audits (completed 7,538) – the value of tax evasion was PLN1,508 billion; and
- initiated 1,967 customs and tax audits (completed 1,953) – the value of tax evasion was PLN4,297 billion.

The Polish tax system is affected by a high level of variability. Almost a third of all tax regulations are changed during the calendar year. The most frequent changes of legislation occur in the acts regarding PIT, CIT and VAT. Hence, most tax controversies arise regarding these taxes. Since their introduction in the 1990s, the PIT, CIT and VAT acts have been amended hundreds of times.

1.3 Avoidance of Tax Controversies

Tax law in Poland is complex and is subject to constant change. To avoid tax controversy, the taxpayer should implement internal procedures to minimise tax risk, including verifying business partners before doing business. It is important for taxpayers to constantly monitor changes in tax legislation.

If a taxpayer has doubts regarding the proper application of tax laws and tax and customs information, it is possible to contact the National Tax and Customs Information Office by telephone to obtain free information related to the taxpayer's tax obligations. However, the informa-

tion provided by the National Tax and Customs Information Office is not binding on the taxpayer.

Moreover, taxpayers may also apply for a binding tax ruling on whether any planned or actual taxpayer actions, arrangements or transactions comply with Polish tax law. If a tax ruling is issued, tax authorities may not challenge the tax settlements of a taxpayer following the letter of the ruling. Confirmation of a taxpayer's standpoint protects a taxpayer from criminal liability and from the obligation to pay interest on tax arrears in cases where the tax authority changes its point of view on that particular matter.

Further, the biggest advantage of an individual tax ruling is that it may protect a taxpayer from paying tax in circumstances where the taxable event has not already taken place. It is possible to appeal to the Provincial Administrative Court if the tax ruling is unfavourable to the taxpayer. An application for a tax ruling may be submitted jointly by two or more taxpayers participating in the same transactions or events.

The tax authority should issue an individual tax ruling without undue delay, but no later than within three months. Currently, the provisions of the acts introduced due to COVID-19 have extended this deadline to six months.

The taxpayer has a right to apply for a protective opinion which confirms that there is no danger of GAAR's application regarding a planned transaction, action or arrangement. The fee for obtaining such an opinion is much more costly than for obtaining an individual tax ruling (a tax ruling costs PLN40, a protective opinion PLN20,000).

From 1 November 2019, it has been possible to apply to the Director of the National Revenue Information System for Binding Rate Information which confirms the correctness of the applied VAT rate. Binding Rate Information has been applicable since 1 July 2020 when the VAT matrix regulations entered into force.

1.4 Efforts to Combat Tax Avoidance

Poland has already implemented various OECD BEPS recommendations to combat tax avoidance, eg, CFC rules, CbCR rules, new TP documentation rules, limitation on the deductibility of interest, IP/Innovation Box, and MDR notification.

The Polish tax administration's activities aim to combat tax fraud. Poland is firmly focused on eliminating the remaining loopholes in the Polish tax system by amending existing provisions and introducing various regulations, eg, exit tax or stricter rules for controlled foreign companies (CFC), new requirements for transfer pricing documentation, or reporting tax schemes (Mandatory Disclosure Rules – MDR). These measures are taken to prevent tax base erosion and profit shifting, aggressive tax optimisation, indirect tax fraud, and tax leakages caused by all the above.

It is worth adding that the Polish tax administration is now more focused on TP issues than in the past by challenging the arm's length character of the transaction. Tax authorities are increasingly identifying harmful tax schemes in the activities of large multinational corporations in connection with the obligations imposed by the MDR legislation.

In this regard, the BEPS recommendations do have a substantial impact on the Polish government's tax policies and have led to increasing numbers of tax controversies in Poland.

1.5 Additional Tax Assessments

In Polish tax law, the final decision issued by a second-instance tax authority is an enforceable decision. This means that, as a rule, the taxpayer must pay the tax liability resulting from the decision, together with interest. If the tax liability is not settled, executive proceedings may be initiated against the taxpayer. A taxpayer may avoid executive proceedings by filing the following to the court:

- an application to suspend the enforcement of a decision;
- a request to defer the payment of a tax liability and interest until the case is finally resolved; or
- a request for tax liability and interest to be paid in instalments.

To obtain a deferment of payment/be permitted to pay in instalments, the taxpayer's interest or the public interest must be proved. This relief is granted as de minimis aid.

In any event, it is possible to appeal to a Provincial Administrative Court against the final decision issued. A taxpayer is not obliged to pay or guarantee the tax assessed to be able to lodge an administrative claim.

Criminal Filing Made Against the Taxpayer

In connection with initiating tax proceedings against a taxpayer, criminal and fiscal proceedings may also be initiated at the same time.

2. Tax Audits

2.1 Main Rules Determining Tax Audits

Tax authorities may verify if a taxpayer has properly applied tax law. In Poland, there are no clear criteria given by the tax authorities that cause a tax audit to be initiated. As a rule, the tax authorities are free to decide whether to initiate a tax audit.

2.2 Initiation and Duration of a Tax Audit

A tax audit is initiated to check whether the taxpayer is complying with its obligations under Polish tax law. The tax authorities are obliged to notify a taxpayer that a tax audit has been planned. The tax audit is initiated no earlier than after seven days and no later than after 30 days from the date of the delivery of the notice on the intention to initiate the tax audit. If the tax audit is not initiated within 30 days of the date of the notice, a new notice is required to initiate the tax audit. In certain circumstances, a tax audit may be conducted without prior notification (eg, where a fiscal or commercial offence has been committed).

The tax audit must be conducted within the period indicated in the authorisation (ie, a document authorising the tax authority to initiate a tax audit). Under the Business Act, the duration of all audits of a business entity conducted during a single calendar year may not exceed the following:

- micro-enterprises – 12 business days;
- small enterprises – 18 business days;
- medium-sized enterprises – 24 business days; and
- large enterprises – 48 business days.

The taxpayer must be notified of any failures to complete the tax audit within the period specified in the authorisation.

Tax liability becomes time-barred after five years, counting from the end of the calendar year in which the deadline for payment of the tax expired. Commencing a tax audit does not

suspend or interrupt the limitation period of a tax liability.

2.3 Location and Procedure of Tax Audits

Tax audits may occur in the tax authority's headquarters or on the taxpayer's premises. Most often, a tax audit is conducted at the audited taxpayer's registered office or another location where the business activity is performed, or at locations where documents are stored. Therefore, the audited taxpayer should be present while a tax audit is conducted.

Tax audits are based mainly on printed documents, but they may also be based on data made available electronically. The audited taxpayer has the right to actively take part in the tax audit. In particular, the taxpayer may submit clarifications, present evidence, or demand that certain documents be considered or witnesses heard. The audited taxpayer should co-operate with the tax authority to allow it to perform its task effectively (eg, provide access to documentation and necessary clarifications).

2.4 Areas of Special Attention in Tax Audits

Areas and matters for the tax auditors' special attention are various and depend on which tax is verified. During the tax audit, the tax authorities may verify accounting documents, invoices and other documents. The tax authorities may extensively verify the taxpayer's compliance with tax legislation.

In particular, the tax authorities very carefully examine all types of reorganisation and restructuring operations in which they see taxpayers recognising beneficial tax effects and unjustified tax savings. Transactions between related parties are also verified very carefully.

2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

At this point, it is difficult to assess whether the provisions on cross-border exchanges of information and mutual assistance between tax authorities have resulted in an increase in the number of tax audits in Poland. The Ministry of Finance has not yet published such data.

However, it is certain that international administrative co-operation may have led to an increase in the number of tax audits due to the flow of data or other information between foreign tax authorities. A Polish tax authority may request information from a foreign tax authority and vice versa. As a result, foreign and Polish tax authorities may assist each other; this may lead to an increase in the number of tax audits.

Recently, the Polish tax authorities have co-operated with foreign tax authorities, especially in the area of VAT carousel proceedings. For a tax audit, the Polish tax authorities very often apply to a foreign tax authority with a request for information (SCAC information) regarding a foreign counterparty of a Polish company.

2.6 Strategic Points for Consideration During Tax Audits

During a tax audit, the taxpayer should co-operate with the tax authorities. In particular, the taxpayer should submit the requested documents, provide evidence, make statements, respond to summons from the authority, and participate in the inspection activities. An unjustified refusal to provide the requested documents or attempts to complicate or delay the audit may constitute a violation of that obligation.

It is advisable for the taxpayer to co-operate with the auditors, to clarify their arguments, prove the content of their documentation and declarations, and generally supply to the auditor all the information that is needed to ascertain the facts relevant for taxation.

3. Administrative Litigation

3.1 Administrative Claim Phase

In most cases, tax proceedings are initiated by the tax authority when a tax audit reveals irregularities on the side of the taxpayer (eg, tax arrears, undisclosed income, or an improper tax return). Tax proceedings may also be initiated upon a taxpayer's application. There are two stages involved in tax proceedings: generally, in the first instance, the tax authority is the head of the tax office; and in the next instance (the higher instance), the tax authority is the director of the tax administration chamber.

Every tax decision made in the first instance of proceedings may be appealed and heard at the higher instance (mostly by the director of the tax chamber). To appeal a tax decision, the appeal must be submitted within 14 days of the date of the delivery of the decision. A decision is final if a taxpayer does not file an appeal within this time period, and the tax proceedings are then complete.

In cases where an appeal is submitted to the higher instance, the higher instance tax authority will settle the case, and its decision will be final and enforceable. The appeal authority may:

- accept the taxpayer's appeal and issue a new decision;
- revoke the decision of the first instance and refer the case for reconsideration;
- uphold the decision of the authority of first instance; or
- declare the appeal inadmissible.

As a general rule, an appellate body may not issue a decision to the disadvantage of an appealing party unless the decision of the first-instance body grossly violates the law or the public interest.

That final decision may be challenged by lodging a complaint to the Provincial Administrative Court.

3.2 Deadline for Administrative Claims

A case on appeal should be disposed of no later than two months from the date of receipt of the appeal by the appellate authority. The tax authority is obliged to notify the party of each case not settled on time, giving reasons for missing the deadline and indicating a new deadline to settle the case. The taxpayer does not have the right to lodge a reminder to the higher chamber if the case is not settled on time by the appeal body. However, a taxpayer may file a complaint against the inaction of the tax authorities or the excessive length of the procedure with the Provincial Administrative Court if the case is not settled within the time limit.

4. Judicial Litigation: First Instance

4.1 Initiation of Judicial Tax Litigation

Complaints against decisions and rulings (and other administrative acts) should be lodged within 30 days of the decision to the Provincial Administrative Court via the tax authority that issued the decision or ruling in the last instance. The 30-day period begins to run from the day following the day on which the taxpayer received the decision. A complaint to the court should be

filed via the authority which issued the contested decision.

The right to lodge a complaint to the Provincial Administrative Court is available to any person who has a legal interest in the proceedings, eg, a public prosecutor, ombudsman, or societal organisations (mostly non-governmental organisations), within the scope of their statutory activities and in matters concerning the legal interests of other persons, if the organisation has participated in administrative proceedings. Taxpayers may represent themselves in the Provincial Administrative Court. Alternatively, they may be represented by a professional representative, eg, an attorney-at-law, an attorney, or a tax adviser.

4.2 Procedure of Judicial Tax Litigation

When a complaint is lodged, the administrative authority must turn it over to the court with the relevant files and prepare a response within 30 days of the date the complaint was lodged. The authority analyses the possibility of granting the complaint as a whole (a "self-inspection procedure"). The complaint is not particularly formalised since it must only meet the requirements of a letter in the court proceedings.

The Provincial Administrative Court first examines the formal and legal correctness of the complaint. The complaint will be rejected when the court finds that there are formal obstacles preventing it from hearing the case. When the court finds no formal or legal deficiencies in the complaint, it will examine it. The court may:

- dismiss the complaint;
- overturn a decision in full or in part; or
- confirm the invalidity of a decision in whole or in part.

The Provincial Administrative Court rules within the limits of the case but is not bound by the claims or statements stated in the complaint or the legal grounds raised by the party (ie, a taxpayer or a tax authority).

Consequently, the court will independently assess the correctness of the tax authority's action or decision and assess the tax authority's compliance with the law. Generally, an administrative court may not alter a decision or rule on merit (ie, issue a decision instead of the tax authority) but it may instruct a tax authority to re-examine a case.

Often the ruling is issued at the first hearing. The administrative court hears cases based on the file of documents provided by the public authority.

4.3 Relevance of Evidence in Judicial Tax Litigation

The administrative court examines the case based on the case files (documents) presented by the tax authorities. Witnesses are not heard before the administrative court and neither are expert witnesses consulted (such evidence, if it was necessary to resolve the case, should have been provided during the administrative proceedings by the tax authorities, and, if it was not provided, the decision of the court is likely to be overturned). However, the court may take supplementary evidence from documents if it is necessary to clarify significant doubts and will not unduly prolong the proceedings in the case.

4.4 Burden of Proof in Judicial Tax Litigation

As Polish tax proceedings follow the principles of an official investigation, there are no statutory provisions regarding the burden of proof. This obligation results from the principle of objective

truth adopted in administrative proceedings which obliges the authority to exhaustively collect and consider all the evidence, whereby it undertakes, ex officio or at the request of a party, all actions necessary to clarify the exact state of the facts and to resolve the case. That means that the tax authorities must prove all facts and circumstances necessary to justify a tax claim against the taxpayer. The taxpayer, on the other hand, is required to present their position and provide substantiated evidence against the facts presented by the tax authorities.

In a criminal tax procedure, it is always the state that is required to prove the illegality of a taxpayer's action.

4.5 Strategic Options in Judicial Tax Litigation

The strategy pursued must be adapted to each individual case, and there are no general guidelines suitable for every case. The court decides the case based on the evidence gathered by the tax authorities during the tax proceedings (all the evidence should be presented during the tax proceedings). Legal arguments may be presented during the judicial case.

4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

In addition to domestic case law, Polish courts take into consideration case law from the European Court of Justice and the European Court of Human Rights. International guidelines, eg, the OECD Transfer Pricing Guidelines or the OECD Model Tax Convention, are usually followed by the tax authorities and may also be used as grounds to support argumentation in tax court proceedings.

5. Judicial Litigation: Appeals

5.1 System for Appealing Judicial Tax Litigation

The structure of administrative courts in Poland consists of two levels: Provincial Administrative Courts as courts of lower instance and the Supreme Administrative Court as the court of higher instance. There are 16 administrative courts of lower instance, and one Supreme Administrative Court which has its seat in Warsaw.

A judgment of the Provincial Administrative Court may be challenged by a complaint to the Supreme Administrative Court (signed by an attorney, an attorney-at-law, or a tax adviser). Leave to appeal does not depend on the value of the case or on the nature of the controversy.

5.2 Stages in the Tax Appeal Procedure

A cassation appeal is lodged via the Provincial Administrative Court that issued the judgment within 30 days of being served the judgment together with a justification. The cassation appeal may only be based on strictly defined grounds, namely:

- a violation of substantial law owing to an erroneous interpretation or incorrect application of law, or
- a breach of procedural regulations,

if that infringement may have seriously affected the outcome of a particular case. The cassation appeal may not be based on any irregularity in the proceedings but only on the infringements that may possibly affect the content of the decision.

The counterparty (who has not filed the cassation appeal) may file a written response to the

cassation appeal within 14 days of being served the cassation complaint.

If the complaint fulfils the requirements, the hearing before the Supreme Administrative Court cassation appeal is scheduled. However, obtaining a hearing date may take up to two-and-a-half years from submitting the cassation appeal.

5.3 Judges and Decisions in Tax Appeals

In the first instance and in cassation proceedings, the case is decided by a panel of three judges, one of which is a reporting judge. The administrative court sits with a single judge in a closed session.

A judge may be excluded from the court hearing by law, at the judge's own request, or by a party's request. Judges are selected randomly by the chairperson of the judicial division. When the case is referred back to the court for reconsideration, the chairperson of the judicial division orders that the panel of the court will be determined by drawing lots.

The Provincial Administrative Court collegium, on the motion of the court president, assigns judges and court referees to judicial departments and determines the detailed rules for assigning cases to judges and entrusting court referees. Generally, supervision of the Provincial Administrative Court is performed by the president of the Supreme Administrative Court, vice-presidents, and other judges and employees of this court, as well as by presidents of Provincial Administrative Courts, vice-presidents, and division presidents of these courts.

6. Alternative Dispute Resolution (ADR) Mechanisms

6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

Alternative dispute resolution is not widely used in disputes between taxpayers and the tax authorities. There are no general provisions pertaining to the mutual agreement procedure (MAP) in the Polish Tax Ordinance Act. The MAP is present only within bilateral tax treaties between countries.

Polish law on proceedings before administrative courts provides only one specific procedure in proceedings before the administrative courts: mediation. Mediation is allowed only when an appeal has been filed with the administrative court, and may be conducted at the request of a complainant or the authority. It is also possible that mediation is initiated ex officio. The deadline for filing a request for mediation is the date of the hearing. As a rule, mediation should be conducted during a single court session. If the mediation ends in failure and the parties fail to agree on a common position, the case will be resolved through the standard procedure (ie, it will be referred to a hearing).

When a dispute is effectively settled at mediation, there are two possible outcomes: the court proceedings are discontinued because of the withdrawal of the appeal, or the mediation arrangements may provide an obligation for the administrative authority to verify its decision.

The administrative authority is free to choose how it will proceed within the scope of the performance of the mediation. Therefore, a complainant has no influence on the application of such arrangements. Nevertheless, it is possible to file an appeal to a Provincial Administrative

Court against the act or measures taken by the authority as a result of the mediation within 30 days. However, mediation is not a widely used mechanism in the administrative judiciary.

6.2 Settlement of Tax Disputes by Means of ADR

As previously stated, there are no domestic ADR mechanisms available in Poland.

6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

No agreement may be reached outside the scope of an administrative complaint procedure or litigation.

6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

The taxpayer is entitled to obtain:

- a tax ruling; and
- binding tax rate information.

There is also an investment agreement which is reserved for investors who plan or have started an investment within the territory of the Republic of Poland worth PLN100 million (PLN50 million starting from 2025).

Tax Ruling

A tax ruling presents the tax authorities' standpoint of the application of a tax law (a specific article) to a situation presented by a taxpayer. A taxpayer may file a motion to issue such a ruling (individual tax ruling), or the Ministry of Finance may issue a general tax ruling applicable to all taxpayers.

A tax ruling is binding upon the tax authorities but not on a taxpayer. In other words, as a rule, tax authorities may not challenge the tax settlements of a taxpayer that is following the letter of the ruling. Confirmation of a taxpayer's standpoint protects a taxpayer from criminal liability and from the obligation to pay interest on tax arrears in cases where the tax authority changes its point of view on that particular matter.

From 2019, the tax authorities may revoke individual tax rulings obtained in the past if they aimed to circumvent the law or if they allowed optimisation measures to be taken in an artificial way or without economic justification and, in consequence, allowed the taxpayer to obtain a tax advantage. This means that, in many cases, the obtained individual tax rulings will no longer grant protection to those taxpayers. Moreover, the subject of the request for interpretation may not be the provisions to prevent tax avoidance which relate, inter alia, to: GAAR; abuse of law in VAT; conduct of actual activity (CFC); measures limiting contractual benefits; specific anti-abuse rules (SAARs), etc.

If the taxpayer obtains an unfavourable tax ruling, it may appeal to the Provincial Administrative Court.

Binding Tax Rate Information

From 1 November 2019, it is possible to apply to the Director of the National Revenue Information System for Binding Rate Information (BRI) which confirms the correctness of the applied VAT rate. The BRI has been applicable since 1 July 2020 when the VAT matrix regulations entered into force. The BRI grants taxpayers tax and penal-fiscal protection if the correctness of the applied VAT rate is challenged during a potential tax audit or tax proceedings.

6.5 Further Particulars Concerning Tax ADR Mechanisms

As previously stated, there are no domestic ADR mechanisms available in Poland.

6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

There is no ADR mechanism specifically for transfer pricing that is different from those described in **6.1 Mechanisms for Tax-Related ADR in This Jurisdiction**.

7. Administrative and Criminal Tax Offences

7.1 Interaction of Tax Assessments With Tax Infringements

In the Polish tax law system, a taxpayer may be subject to both criminal and administrative liabilities at the same time. However, the procedures and principles under which liability is determined take place under different procedures. Criminal penalties are imposed solely by the criminal divisions of the common courts, whereas administrative tax penalties are imposed by the tax authorities.

Administrative penalties in Polish tax law are not legally defined in any legal act. The prerequisites for being sanctioned with administrative penalties are determined in tax law acts. However, the legal basis for proceedings is the Polish Tax Ordinance Act. Polish tax law recognises many examples of administrative penalties, eg, higher (sanction) tax rates or an additional tax obligation.

For tax offences, the relevant prerequisites and elements are determined in the Penal and Fiscal Code. Procedure and execution are based on the Criminal Procedure Code and on the Enforcement of Penalties Code, respectively. The initiation of the preparatory procedure is conditional upon a justified suspicion that a tax offence has been committed. The pretrial proceedings are conducted mostly by the fiscal authorities.

Criminal penalties for fiscal offences are imposed by courts only. Administrative courts play no role in determining the criminal liability for tax offences.

Criminal (penal-fiscal) proceedings are separate from tax proceedings. Hence, the issuance of a tax assessment decision does not automatically mean that penal-fiscal proceedings will be initiated.

7.2 Relationship Between Administrative and Criminal Processes

Criminal (penal-fiscal) proceedings take place independently of tax proceedings. In penal-fiscal proceedings, the provisions of the Polish Tax Ordinance Act are not applicable, but those of the Penal and Fiscal Code and the Criminal Procedure Code are. Therefore, it is not for the tax authorities within the tax proceedings or the administrative courts to assess whether a fiscal offence has been committed.

Penal-fiscal proceedings may be suspended in a situation where, due to a pending tax procedure, tax inspection, or pending procedure before tax or customs authorities, or administrative courts, the conduct of such proceedings is significantly impeded. This means that the authority is not obliged to suspend it. In practice, if penal-fiscal proceedings are already initiated during tax proceedings, the prosecuting authority suspends these proceedings. Tax case files are of great importance in a criminal case as they usually constitute the majority of evidence based on

which the fiscal penal proceedings are conducted.

7.3 Initiation of Administrative Processes and Criminal Cases

The tax authorities, after tracing the irregularities within the tax proceedings, are obliged to apply administrative sanctions (if such is provided by the law) in the dimension prescribed in a tax regulation. Administrative penalties are imposed within the same proceedings in which the tax authority has determined the tax liability.

Regarding criminal (penal-fiscal) litigation, the initiation of the preparatory procedure is conditional upon a justified suspicion that a tax offence has been committed. The competent authority that initiates and conducts the preliminary investigation is generally the tax office. The perpetrator has the position of a suspect within the preparatory procedure and the defendant within the court procedures (main hearing).

As criminal proceedings are separate from tax proceedings, the administrative infringement process (tax procedure) may not evolve into a criminal tax case. However, "regular" tax audits may lead to the initiation of fiscal criminal proceedings, and therefore potentially to conducting further fiscal criminal audits, ie, these proceedings may run in parallel.

7.4 Stages of Administrative Processes and Criminal Cases

Tax Administrative Cases

Administrative penalties are imposed in tax proceedings regulated in the Polish Tax Ordinance Act. There are two stages involved in tax proceedings. The decision imposing a tax liability/administrative sanction may be appealed to the higher tax authority. Then, the final tax decision may be challenged by appeal to the Provincial Administrative Court. Next, the judgment of the Provincial Administrative Court may be the object of an extraordinary appeal to the Supreme Administrative Court.

Criminal Tax Cases

The competent authority to initiate and conduct the preparatory proceedings is generally the tax office. The indictment is approved and filed by the public prosecutor. Criminal penalties for fiscal offences are imposed by courts only. The competent courts for hearing criminal law cases are the common courts: the District Courts, Provincial Courts, and Courts of Appeal. The Supreme Court examines cassations (extraordinary appeals). Criminal cases are led by the criminal divisions of the aforementioned courts. The Provincial Administrative Courts and Supreme Administrative Court play no role in determining criminal liability for fiscal crimes.

7.5 Possibility of Fine Reductions

Tax liability (including the additional tax assessment) is not deductible from the fine applicable to the corresponding fiscal offence. However, the penal-fiscal procedure provides for the use of various consensual instruments encouraging the co-operation of the suspect/defendant with the authorities and offering them various advantages in return.

Among these instruments is a voluntary disclosure letter (self-disclosure) under the Penal and Fiscal Code which is a declaration on committing a prohibited act. Due to the voluntary disclosure letter, a taxpayer may avoid the negative consequences of negligence if the tax authority has no knowledge of the committed offence. One of the conditions for using the voluntary disclosure letter is the payment in full of the amount due within the time limit set by the competent tax authority.

Furthermore, the court may refrain from imposing a penalty if, prior to commencing proceedings for a fiscal misdemeanour consisting of a persistent failure to pay tax on time, the due tax has been paid in full to the competent tax authority.

Payment of the amount due in full within the prescribed period is also part of other consensual instruments in penal-fiscal proceedings, eg, the voluntary submission to criminal liability.

7.6 Possibility of Agreements to Prevent Trial

In criminal law, only courts impose penalties. Therefore, it is not possible to enter into an agreement with the tax authority conducting the preparatory proceedings without a court ruling.

The Penal and Fiscal Code provides for the institution of a conviction without a trial. This measure consists of an agreement between a suspect and a public prosecutor or an authority conducting preparatory proceedings on the penalty or penalty measure that would be imposed by the court. The submission of an appropriate request is conditioned by the undoubted circumstances of having committed a prohibited act, and that the perpetrator's conduct indicates that the objectives of the proceedings will be achieved. The conviction without a trial is enclosed with the indictment.

The above form of completion of the proceedings shortens their duration. Furthermore, thanks to a conviction without a trial, the perpetrator may be treated more leniently. However, it is still the court that decides on the penalty.

7.7 Appeals Against Criminal Tax Decisions

The first-instance judgment may be appealed to the Provincial Court or Appeal Court. The time limit for the appeal is 14 days running from the date the judgment is served with the statement of reasons.

A cassation appeal may be filed against a final judgment to the Supreme Court. The time limit to file a cassation appeal by the parties is 30 days from the date on which the judgment with the statement of reasons was served.

7.8 Rules Challenging Transactions and Operations in This Jurisdiction

Under the Polish Tax Ordinance Act, when issuing a decision with the application of the measures limiting contractual benefits, SAARs, incorrect withholding tax (WHT) statements, or transfer pricing regulations, the tax authority determines the additional tax liability corresponding to a fraction of the tax advantage found in the proceedings (ie, in the range of 10% to 80% of the tax benefit). The additional tax liability is applied automatically within the standard tax procedures.

The above additional tax liability does not apply to an individual who is liable for a fiscal offence for the same act. By evading tax, the taxpayer is exposed to criminal or penal liability for failing to pay the tax which they were obliged to pay. The circumstances of each case involving the application of GAAR, SAAR, transfer pricing rules, or anti-avoidance rules are analysed in terms of whether there is a justified suspicion that a tax offence has been committed; this is a prerequisite to initiating preparatory proceedings. Therefore, in situations of this type, the competent authority always verifies whether the

conditions for initiating penal-fiscal proceedings have occurred.

8. Cross-Border Tax Disputes

8.1 Mechanisms to Deal With Double Taxation

Whether cross-border double taxation is remedied by means of domestic litigation or an available mechanism under the respective double taxation treaty, if any, will depend entirely on the specifics of the case at hand. MLI or EU Tax Disputes Directive solutions have not yet emerged in practice, but are expected to become a more common option for how to resolve international tax disputes in the future.

8.2 Application of GAAR/SAAR to Cross-Border Situations

GAARs or SAARs have become commonly used in Poland, though mostly in domestic situations.

As for the principal purpose test (PPT) introduced with the MLI, this is yet to enter into force for many of the major Polish double tax treaties and it remains to be seen how it will affect the way Polish tax authorities combat BEPS in cross-border situations.

8.3 Challenges to International Transfer Pricing Adjustments

There is no official data available in respect to challenges to international transfer pricing adjustments. However, transfer pricing adjustments are mostly challenged under domestic litigation.

8.4 Unilateral/Bilateral Advance Pricing Agreements

In Poland, advance pricing agreements (APAs) may be concluded (since 2006); however, due to lengthy/protracted proceedings and a negligible percentage of entities that finally received a positive decision, this instrument quickly became understood as very hard to get, and, as such, is unpopular. Indeed, by the end of 2016, only 39 unilateral agreements in total were signed. However, due to legislative changes in the area of TP in 2019, an increase in the popularity of and interest in APAs can be observed. In 2021, there were 96 unilateral and five bilateral APAs concluded.

Applying for an APA is a long process as the whole procedure requires collecting all the necessary documentation, preparing a comprehensive application, and presenting the proper justification of the transaction conditions applied. Usually, an exchange of additional correspondence and information is also required, as well as the incurring of a relatively high fee. The application is submitted to the relevant department, usually after a prior meeting at the Ministry of Finance (but this is not formally necessary). After filing an application, affiliated entities are expected to present a methodology for determining the transfer price to the tax administration.

8.5 Litigation Relating to Cross-Border Situations

Although there is no official data available, the highest rates of cross-border tax litigation cover transfer pricing and withholding tax. Litigation also involves permanent establishment and fixed establishment assessments, or the supply chain of goods involved in VAT fraudulent activities.

9. State Aid Disputes

9.1 State Aid Disputes Involving Taxes

As Polish law provides for certain state aid regarding taxes, especially during the COVID-19

pandemic (eg, allowing one to file an application to pay tax in instalments or to redeem the interest on tax due), there is no official record of disputes in this regard. However, as an example of a high-end state aid dispute involving taxes, the ruling from 2021 of the Grand Chamber of the CJEU on the so-called trade tax in Poland should be mentioned. Revenue exceeding a certain ceiling was to be taxed. According to the European Commission, the new tax introduced by Poland constituted an illegal aid measure for some entrepreneurs, hitting larger entities, often of foreign origin. The CJEU disagreed with such reasoning. The EU court emphasised that such a progressive taxation system may constitute prohibited state aid in a situation where it favours certain entrepreneurs or groups of entrepreneurs. However, in this case, the CJEU stated that the Commission, which is obliged to prove the existence of prohibited state aid, failed to prove the existence of such a selective advantage. It was wrong for the Commission to take as its point of reference an "ideal" system in which Polish vendors pay the same tax irrespective of the amount of revenue they receive.

9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid

In accordance with the provisions of Council Regulation (EU) No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (referred to as the Aid Regulation), if it is confirmed that an unauthorised aid measure has been applied, the European Commission issues a decision ordering the recovery of the aid received, with interest due from the date of payment of the aid until the date of its actual recovery. The beneficiary may appeal against the Commission decision to the CJEU. Obtaining undue state aid or using the aid received in a manner inconsistent with its intended use which puts public finances at risk also constitutes a fiscal offence.

Also, if the European Commission considers that Poland has unlawfully granted state aid in the form of tax advantages, it will give a reasoned opinion on the matter after giving the country the opportunity to submit its comments. In the meantime, the Commission may apply interim measures during the procedure, eg, a suspension injunction or a recovery injunction.

If Poland does not comply with the opinion within the time limit laid down by the Commission, the latter may decide to refer the case to the CJEU. The Council of the European Union may take a decision in a specific situation concerning the verification of state aid if a member state so requests.

9.3 Challenges by Taxpayers

Over the past year, Polish taxpayers have not raised this issue in court cases. However, in 2020, an interesting case on the controversial tax treatment of wind farms in Poland for 2017 came before the Supreme Administrative Court. The Court, relying on the CJEU's interpretation, indicated that even granting unlawful public aid (not notified to the European Commission) by a member state does not entitle the victim of such aid to demand that the aid be extended to it. The possible illegality of a tax exemption, in light of the provisions in the area of state aid, does not affect the legality of the tax itself, so enterprises obliged to pay the tax may not plead before the national court that the exemption granted is unlawful to avoid its payment or obtain its refund.

9.4 Refunds Invoking Extra-Contractual Civil Liability

The Polish Tax Ordinance Act consists of an independent institution of the State Treasury's liability for damages for issuing an unlawful tax decision. Unfortunately, in practice, the State Treasury's liability for damages is extremely difficult to prove before Polish courts. This is illustrated by the fact that, in 2020, total compensation awarded amounted to PLN210,000 (around EUR45,000) with 159 cases pending.

10. International Tax Arbitration Options and Procedures

10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

Poland did not opt to apply Part VI of the MLI.

10.2 Types of Matters That Can Be Submitted to Arbitration

As mentioned previously, the arbitration solutions have not yet been recognised by the Polish authorities. Therefore, there is no policy regarding this issue and the related solutions indicated in the MLI.

10.3 Application of the Baseball Arbitration or the Independent Opinion Procedure

Due to not implementing the provisions of Part VI of the MLI, these instruments are not applicable in tax disputes in Poland.

10.4 Implementation of the EU Directive on Arbitration

The assumptions of the Directive on tax dispute resolution mechanisms in the European Union were implemented in Poland in 2019. One of the most significant measures introduced into Polish jurisdiction is the Procedure for resolving disputes concerning double taxation between European Union member states (DRM).

10.5 Existing Use of Recent International and EU Legal Instruments

The MLI and the EU Arbitration Directive are very recent and no reliable information is available yet.

10.6 New Procedures for New Developments Under Pillar One and Two

It should be noted that Poland was one of the countries that, on 1 July 2021, issued a joint statement on the desire to develop new common principles of taxation, including places of income taxation and a global minimum tax. Recent changes in Polish tax law also indicate a high interest in the presented assumptions. At this stage, it is also difficult to say whether BEPS objectives will be effective regarding the domestic tax system.

10.7 Publication of Decisions

Poland has decided not to apply the provisions of the MLI concerning arbitration regarding the DTT, and, as a result, such decisions are not published.

10.8 Most Common Legal Instruments to Settle Tax Disputes

Currently, international tax disputes are still generally settled under mutual agreement procedures or, more commonly, under domestic procedure rules in a litigation procedure between taxpayers and the state.

10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

Due to the overall complexity of international tax law matters subject to arbitration proceedings,

it is generally highly advisable for taxpayers to obtain professional legal advice (either from an attorney, attorney-at-law, or tax adviser).

11. Costs/Fees

11.1 Costs/Fees Relating to Administrative Litigation

There is a distinction between administrative fees and costs in tax proceedings. As a rule, the tax authorities do not have influence on the fees to be charged; they are most often determined under the Act of 16 November 2006 on stamp duty. Conversely, costs in tax proceedings are fixed by the authorities based on the expenditure incurred in connection with the conduct of the proceedings.

In principle, the costs of administrative proceedings (also tax proceedings) are the responsibility of the tax authority conducting the proceedings to the extent that it fulfils its statutory obligations, eg, to conduct evidence proceedings as part of the ongoing administrative proceedings. As a rule, the costs of proceedings before the tax authorities are incurred by the State Treasury, voivodeship, county or district. This leads to the conclusion that these costs will not apply to a controlled taxpayer (during a tax audit or investigative proceedings). These concern, in particular:

- travel expenses and other receivables of witnesses;
- expert and translator costs;
- costs of inspections; and
- costs of delivering official letters.

A taxpayer, on the other hand, may be charged with the costs of administrative proceedings that result from the taxpayer's fault or are incurred in their interest or at their request.

The Polish tax authorities do not charge administrative fees for lodging an appeal.

11.2 Judicial Court Fees

In principle, court proceedings involve costs. Court costs include fees (an entrance fee) and expenses (eg, translation expenses). The court costs must be paid by the taxpayer party who has filed a complaint for which the fees are due or expenses incurred. If the due fee is not paid, the court requests payment within one week. Otherwise, the case will be dismissed. The amount of the fee is based on a percentage of the amount in dispute (this may range from PLN100 to PLN100,000) or, in some cases, the amount is provided for as a fixed fee (this may range from PLN100 to PLN10,000).

The entrance fee for a cassation complaint amounts to half of the complaint entrance fee; however, not less than PLN100.

The costs of the proceedings (fees, expenses, and attorney's fees) are borne by the party that loses the proceedings. This means that there is an obligation at the end of the proceedings (and this is stated in the judgment) that the losing side will reimburse the costs previously advanced by the winning party.

11.3 Indemnities

The provisions of the Polish Tax Ordinance Act, within the scope of liability for damages, refer to the provisions of civil law. Hence, it is possible to seek compensation for damage caused in civil proceedings. Additionally, the taxpayer will receive a refund of tax already paid and may claim interest.

11.4 Costs of ADR

If a taxpayer opts for mediation before the administrative court, the costs are usually lower than during traditional judicial litigation. The costs of remuneration and the reimbursement of expenses incurred in conducting the mediation should be paid by the parties.

According to the Ordinance of the Minister of Internal Affairs and Administration of 2 June 2017 on the amount of the mediator's remuneration and reimbursable expenses in the proceedings before the administrative court in cases in which the subject matter of the appeal is a pecuniary sum, the mediator's remuneration is 1% of the value of the subject matter of the appeal, but not less than PLN150 and not more than PLN2,000 for the entire mediation proceedings. The regulation also specifies the fixed amounts of the mediator's remuneration in other cases.

12. Statistics

12.1 Pending Tax Court Cases

In the Supreme Administrative Court, according to the data provided for 2022, there are 12,283 tax cases remaining to be heard for the next period. In addition, further cases are received for cognisance on an ongoing basis. More detailed statistics have not been published.

12.2 Cases Relating to Different Taxes

In 2022, the Supreme Administrative Court received 17,826 cassation complaints (of which the Finance Chamber received 5,217), of which:

- 1,835 concerned VAT;
- 635 concerned real estate tax;
- 1,074 concerned PIT;
- 329 concerned the execution of pecuniary benefits;
- 380 concerned the tax liability of third parties or tax reliefs;
- 458 concerned CIT;
- 228 concerned excise duties;
- 137 concerned transfer tax; and
- 64 concerned inheritance and donation tax.

Among the cassation complaints registered in 2022, complaints against individual interpretations issued by the Minister of Finance, WHT opinions, and Binding Rate Information accounted for 1,173 cases.

Statistics on the value of cases before the Supreme Administrative Court have not been published.

12.3 Parties Succeeding in Litigation

In 2022, at a public hearing, the Supreme Administrative Court set aside the judgment of the court of first instance in 311 cases and referred the cases back to it, and in 588 cases set aside the judgment of the court of first instance and recognised the complaint. In turn, at closed sessions in 2022, in 771 cases, the Supreme Administrative Court set aside the judgment of the court of first instance and referred the cases back to it, and in 1,598 cases set aside the judgment of the court of first instance and recognised the complaint.

13. Strategies

13.1 Strategic Guidelines in Tax Controversies

During a tax dispute, there are many strategic options and decisions to be taken. Each case deserves its own strategy, preparation and analysis.

It is of pivotal importance to retain a professional counsel to review and summarise the facts and to prepare legal arguments. Also, it should be remembered that new facts and evidence may only be brought forward while the case is pending with the tax authorities.

Trends and Developments

Contributed by:
Sławomir Łuczak and Ewelina Całczyńska
Sołtysiński Kawecki & Szlęzak

Sołtysiński Kawecki & Szlęzakis an independent Polish law firm with a team of over 170 lawyers, offering legal services to businesses from Poland and abroad. SK&S has over 30 years of experience in providing comprehensive advisory services in all aspects of tax law, in the following areas: new technologies and the digital economy, taxation of personal income, merger and acquisition transactions and business and capital restructuring, tax proceedings, financial transactions, regulatory issues, compliance, VAT, excise tax and customs duties, private clients and international taxation. It is committed to the continuing professional development of its experts. This, combined with an interdisciplinary nature and the high quality of its services, enables it to advise clients on even the most difficult tax issues that pose significant challenges, as well as both legal and business risks. It offers strategic advice and finds solutions to even the most novel and complex tax problems.

Authors

Sławomir Łuczak has been an attorney-at-law and a partner in the tax practice of Sołtysiński Kawecki & Szlęzak since 2007. He specialises in tax, customs and foreign exchange law. Sławomir has broad experience in international tax law and in representing clients in tax and customs matters before tax and customs authorities and administrative courts. He advises on tax matters in restructuring and consolidation projects, and currently also leads the Private Clients practice. Sławomir is a member of the International Fiscal Association (IFA) and Association Européenne d'Etudes Juridiques et Fiscales (AEEJF). He is involved in the work of the Union Internationale des Avocats (UIA) in its two groups: the Tax Law Commission and Family Law Commission.

Ewelina Całczyńska is an associate at Sołtysiński Kawecki & Szlęzak and provides comprehensive advice on tax law, including issues such as VAT, CIT, PIT (particularly in international transactions), and real estate tax. Her advice covers tax compliance, tax planning, conducting and supervising tax audits, and implementation of tax reliefs (such as R&D relief). Ewelina has provided tax advice in numerous transactions in the real estate and financial markets.

Sołtysiński Kawecki & Szlęzak

Jasna 26
00-054 Warsaw
Poland

Tel: +48 22 608 70 00
Fax: +48 22 608 70 70
Email: office@skslegal.pl
Web: www.skslegal.pl

COVID-19 Pandemic Regulatory Framework

The COVID-19 pandemic resulted in a number of permanent and temporary changes to tax law, including the following.

- The deadline for filing PIT and CIT tax returns has been postponed once.
- The deadlines for filing MDR tax schemes have been suspended. The suspension of domestic tax schemes continues.
- The deadline to apply the residence certificate has been extended. If the 12-month deadline for the residency certificate were to expire during the COVID-19 pandemic or the state of epidemic emergency announced in connection with the COVID-19, then Polish withholding taxpayers may take the certificate into account for the duration of the pandemic and for two months after its cancellation.

From 2020, due to the epidemic situation caused by COVID-19, the courts have temporarily suspended their activities, which has further increased the delays in the disposal of cases by the courts. Currently, parts of court hearings are being held in closed sessions or in hearings conducted online.

Trend of Tax Litigation Cases

In Poland, value added tax (VAT) has given rise to more tax litigation cases. Based on published statistics by the Supreme Administrative Court for 2022, the Court received 17,826 cassation complaints (of which the Finance Chamber received 5,217) of which:

- 1,835 concerned VAT;
- 635 concerned real estate tax;
- 1,074 concerned PIT;
- 329 concerned the execution of pecuniary benefits;
- 380 concerned the tax liability of third parties or tax reliefs;
- 458 concerned CIT;
- 228 concerned excise duties;
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Among the cassation complaints registered in 2022, complaints against individual interpretations issued by the Minister of Finance, WHT opinions, and Binding Rate Information accounted for 1,173 cases.

Tax Developments and Trends

EPS and MLI

Poland had already implemented a number of the OECD BEPS recommendations, such as:

- CFC rules;
- CbCR rules;
- new TP documentation rules;
- limitation on deductibility of interest; and
- IP/Innovation box.

On 7 June 2017, Poland signed the Multilateral Instrument to Modify Bilateral Tax Treaties (MLI), as stipulated in BEPS Action 15, which entered into force in Poland on 1 July 2018.

From 1 January 2019, the MLI is applicable to withholding taxes in respect of double tax treaties with Austria, Australia, France, Israel, Japan, Lithuania, New Zealand, Serbia, Slovakia, Slovenia and the United Kingdom.

From 1 January 2020, the MLI is applicable to withholding taxes in respect of double tax treaties with Malta, Singapore, Ireland, Finland, Luxembourg, United Arab Emirates, India, Belgium, Norway, Ukraine, Canada, Iceland and Denmark.

From 1 January 2021, the MLI is applicable to withholding taxes in respect of double tax treaties with Russia, Latvia, Qatar, Saudi Arabia, Cyprus, Portugal, Indonesia, Czech Republic, Korea, Kazakhstan, Bosnia and Herzegovina, Albania, Jordan, and Egypt.

From 1 January 2022, the MLI is applicable to withholding taxes in respect of double tax treaties with Chile, Pakistan, Estonia, Croatia, Hungary, Greece.

From 1 January 2023, the MLI is applicable to withholding taxes in respect of double tax treaties with Spain, Thailand, China, Bulgaria, and the Republic of South Africa.

As for other taxes (including taxes on income from employment), since 1 January 2019, the MLI was only applicable for double tax treaties with Austria and Slovenia. Since then, the MLI has become applicable for double tax treaties with other countries.

Given the fact that the MLI has been recently signed, it may take some time to conclude the final scope of double tax treaties and the scope of their amendments. At this time, it is too early to see or to predict the effectiveness of the above-mentioned measures.

It should be noted that in 2019 Poland introduced the obligation to report tax schemes, which is the result of the implementation of the Polish tax law BEPS Action 12 and Council Directive (EU) 2018/822 regarding the mandatory disclosure rules for cross-border transactions. Polish Mandatory Disclosure Rules (MDRs) are applicable to those who develop tax planning schemes, make them available to or support enterprises in their implementation (eg, tax advisers, attorneys-at-law, employees of financial institutions). The MDRs apply to both cross-border and domestic transactions. The main reason for introducing MDRs is to discourage taxpayers and their advisers from using tax planning schemes.

Other BEPS implementation measures have progressed at an EU level through the first and second EU Anti-Tax Avoidance Directive (ATAD). On 1 January 2019, Poland introduced a new exit tax and modified GAAR provisions.

The Polish Deal – tax revolution in Poland from 2022

From 1 January 2022, a number of significant changes in tax law came into force, notably the so-called Polish Deal, in the areas discussed below.

PIT

- An increase in the tax-free amount to PLN30,000. All persons whose income is subject to taxation according to the tax scale benefit from this free amount.
- Regulations that raise the income threshold from which a higher 32% PIT rate is applied to PLN120,000. From 1 July 2022, income up to PLN120,000 became subject to 12% PIT (it was 17% in the first half of 2022).
- Changes in the scope of health contributions. For taxpayers conducting a business activity, the amount of health insurance contribution is determined in a new way:
  (a) for those settling with a 19% flat tax, the contribution is 4.9% of income;
  (b) for people settling with a lump-sum tax, the contribution is determined by three thresholds based on 60%, 100% and 180% of the average monthly salary;
  (c) in other cases, a 9% health insurance contribution applies; and
  (d) the proposed regulations do not allow health insurance premiums to be deducted from PIT– the change affects, inter alia, employees, contractors, and other persons with income taxed according to the 12% (previously 17%)–32% scale.
- From 1 January 2022, a new tax relief is applicable. People who have been foreign tax residents for at least three years and who decide to move their residence to Poland and acquire the status of a Polish tax resident gain the possibility of applying the tax exemption for four years. The previous foreign residence needs to be confirmed by foreign tax residency certificates or other evidence documenting the residence for tax purposes. The exemption applies to income from employment relationships, contracts of mandate and business activities, up to an amount not exceeding PLN85,528 per year.
- A foreign income lump-sum for taxpayers with above-average levels of assets ("high net-worth individuals"). This is a new Polish regulation with a new form of flat-rate taxation on foreign income for persons who decide to transfer their tax residence to Poland. As a result of choosing this form of taxation, foreign income will be taxed with a fixed lump-sum tax regardless of the amount of foreign income.

Individuals who have been foreign tax residents for at least five of the six years preceding the year in which they acquired the status of a Polish tax resident, and who decide to move their place of residence to Poland, gain the possibility of applying a lump-sum tax on foreign income for a period of ten tax years. Its amount, irrespective of the level of income, would be no more than PLN200,000 annually.

One of the conditions for applying the flat rate is to incur, in Poland, expenditures for economic growth, the development of science and education, the protection of cultural heritage, or the promotion of physical culture in the amount of at least PLN100,000 a year on average. Closest family members of a taxpayer taking advantage of the flat rate, understood as being a spouse and minors, will also be able to benefit from this solution. The flat rate on their foreign income would be lower by half and would amount to PLN100,000 annually.

CIT

- Transfer Pricing (TP) – the amendments concerning, inter alia, a statement on the local transfer pricing documentation and the arm's length pricing will include an additional element: a statement that the local transfer pricing documentation has been drawn up in conformity with the actual circumstances.

A new regulation in the Penal Fiscal Code will impose sanctions on anyone who, contrary to the obligation, fails to draw up the TP Local File, fails to attach thereto the TP Master File, or has drawn up any of such documentation contrary to the actual circumstances.

The sanction will be a fine of up to PLN33.5 million (in 2023), ie, the highest fine provided for in the Penal Fiscal Code.

- New WHT regime – the amendments concern, inter alia:
  (a) limiting the scope of application of WHT refund to passive revenues that paid to related entities;
  (b) changes to the definition of a beneficial owner;
  (c) opinions on the application of preferences could be issued on the basis of provisions of double tax treaties; and
  (d) broadening the scope of cases in which a copy of the residence certificate may be used.
- Changes in the scope of Estonian CIT. Estonian CIT may also be applied by limited partnerships and limited joint stock partnerships. There has been a reduction from 15% to 10% of the tax base in the case of small taxpayers and taxpayers starting a business, and a reduction from 25% to 20% in the case of other taxpayers. The provision that indicated the upper revenue limit for taxpayers taxed with Estonian CIT at PLN100 million has been repealed. The provision that obliged taxpayers to maintain capital expenditures or salary expenditures at a certain level has also been repealed.
- New minimum income tax. The new tax covers entities subject to CIT whose share of income in revenues (other than from capital gains) will be less than 2%, or which will incur a loss for a given tax year from a source of income other than capital gains. The minimum income tax rate is 10%. The collection of the minimum tax has been suspended until the end of 2023.
- A new tax regime for holding companies.
- New tax reliefs, inter alia:
  (a) tax relief for companies that incur test production costs (prototype allowance) or increase revenue from sales of products (growth-promoting allowance); and
  (b) tax relief for companies that invest in robotics.
- The new possibility of simultaneously applying R&D relief and an IP Box.

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