Major changes in the Polish tax law ahead

On 24 August, the Minister of Finance announced the draft of new legislation amending the current CIT and PIT law, as well as the Tax Code.

The draft law is at least partially the result of implementing the ATA Directive, however there are other **changes** worth noting **as these may significantly impact operations in Poland.**

Changes sealing the tax system include, i.a.:

Changes in the principles of collecting withholding tax (WHT)

- Proposed changes may **fundamentally affect** the mechanism for collecting WHT on so-called **passive income** (dividends, interest, royalties) and payments for certain **intangible services** (e.g., advisory, market research, advertisement services etc.).
- Under the draft law, **the rule would be that** in case of payments **over PLN 2 m** (approx. EUR 0.45 m) in a given year to a given tax payer, the tax remitter will be obliged to collect WHT **on the surplus of over PLN 2 m under the domestic 19% / 20% rate.**
- For payments **below PLN 2 m**, there may be **additional documentation / internal procedures** needed to benefit from the exemption/lower WHT rates.
- The tax payer / tax remitter (in certain cases) will be allowed to **claim WHT overpayment.** The refund procedure **can take up to 6 months (no interest)**, and would require the tax payer providing **substantial documentation** (e.g., statements confirming its active business and beneficial owner status).
- The draft law provides for **two exceptions to the main rule: (i) the tax remitter's board member** represents, **under the fiscal penal code**, i.a., that the tax payer has an active business and is the beneficial owner of payment, and **(ii)** obtaining an **opinion** from the tax authority on the application of the WHT exemption **(only for payments subject to EU Directives)**.
- **The proposed change is highly restrictive and – if it enters into force – may result in a significant increase in administrative burdens and cash flow traps.**

Additional tax liability

- Additional tax liability can be levied in the case of, i.a., non-arm's length settlement between related entities, operations questioned under GAAR rules, or unfounded application of the lower WHT rate/ WHT exemption by the tax remitter.
- In principle, the additional tax liability rates are 40% and 10%, but with additional restrictions each can doubled (e.g. in case of lack of Transfer Pricing documentation) or even tripled (up to 30% or 120%)

"Exit tax"

- Introduction of tax **(for both: corporate entities and individuals)** on the transfer abroad of assets / change of residency of taxpayers currently being Polish tax residents.
- The CIT rate will be **19% (PIT: 19% or 3%**; the latter rate applies only towards assets, the sale of which would not entitle to recognize tax deductible costs according to separate tax provisions) **levied on so-called unrealized profits** calculated as the difference between the fair market value of the transferred assets and their tax value.
- The proposed change has its source in the ATA Directive, and is part of its implementation.
- **Based on the wording of the proposed changes, it is difficult to conclude if exit tax could also apply to cross-border merger of a Polish company.**

Introduction of a framework for Mandatory Disclosure

- Provisions concerning the obligation to report so-called tax schemes having specific hallmarks to the Minister of Finance (listed in the draft law) were proposed.
- The change is also an element of the implementation of the ATA Directive. The obligation will be levied on tax advisors and also clients – depending on the situation.

Automatic cancellation (as of 1 January 2019) of certain individual tax rulings' protection

- If these concerned determination of the tax consequences of the interpreted event under GAAR rules or assessment of the economic reasons of the event.

CFC

- Further changes in the scope of CFC, i.a., the **inclusion of trusts and foundations in CFC regulations**

New limits on deductibility of costs related to passenger cars

- Introduction of limits on: (a) expenses connected with the use of cars in case the company's car is used not only for the purposes of business activity (50%) and (b) lease fees (up to PLN 150k) and increase of the limit (up to PLN 150k) of tax-deductible write-offs for cars owned by the taxpayer;

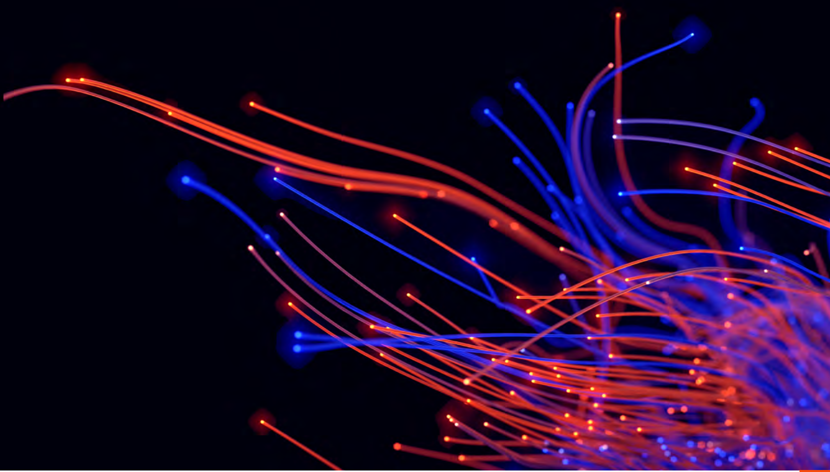
Changes aimed at simplifying the tax system and introducing new preferences include, i.a.:

Innovation Box

- 5% preferential (CIT/PIT) rate for qualified income obtained from certain intellectual property rights (mainly registered ones, e.g. patent rights, protection rights for a utility model, in certain cases - promise for obtaining protection and rights to computer programs, which do not require registration).
- The Innovation Box's introduction supplements existing R&D relief making the tax instruments for supporting innovative operations complete.

Notional interest deduction

- A new instrument in Poland, allowing for deduction for tax purposes of ‚virtual' interest on retained earnings / subsidies provided to the company up to a max. of PLN 250k per year (approx. EUR 60k).



New rules on recognizing acquisition costs of receivables

- The draft law assumes introducing new rules concerning recognizing receivables' purchase price as tax deductible. If the receivables were purchased in a portfolio of at least 100, then only the surplus of repayment from the portfolio over the portfolio's acquisition cost will be considered taxable income.

9% CIT rate

- Small tax payers (whose revenue does not exceed EUR1.2 m) will be allowed to benefit from 9% CIT on their income (other than capital gains).

Copy of certificate of residency

- Tax remitters will be allowed to use a copy of the certificate of residency of the tax payer – this simplification is however limited only to payments not exceeding PLN 10k (per contactor/per year), and only with respect to payments for certain intangible services (e.g., advisory, advertising, management).

The draft of the changes is extensive, but we expect that these will proceed quickly - and are likely to take effect from January 2019.

Worth asking.

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