

Tax Alert

KPMG IN POLAND

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Further significant upcoming CIT changes from 1 January 2016

1) Introduction of an anti-abuse clause in respect of application of the participation exemption into the Polish Corporate Income Tax Act (hereinafter: the "CIT Act"). The scope of application of the above anti-avoidance clause is limited to dividend payments and other profit distributions made by a subsidiary to a parent company

On 9 October 2015, the Sejm adopted the Senate's amendments to the Act of 11 September 2015 amending provisions of the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (hereinafter: the "Act"). The Act will be now referred to the President for signature. Assuming that the Act will be signed by the President, the relevant part of provided changes will come into force from the beginning of 2016.

In particular, starting from 31 December 2015, the Act introduces Article 22c into the CIT Act which limits the scope of application of the Parent – Subsidiary Directive 2011/96/UE implemented to the domestic tax law which provides for a tax exemption for dividends paid between related companies (if certain conditions are met).

According to the adopted Article 22c, the participation exemption will not apply to arrangements between related parties that are artificial and the main driving force behind the arrangements is to obtain a tax advantage (i.e. tax exemption).

Under the new rules, an arrangement or contract shall be deemed artificial if it is carried out without justifiable business or economic reasons, in particular when shares of the paying dividend company are transferred or the company generates income which is further transferred through a dividend distribution or another method of profit distribution.

According to the interim provisions, the anti-abuse clause will apply to income generated starting from 1 January 2016 (in case of the taxpayers that have adopted a tax year other than calendar year – starting from the first day of the tax year commencing after 31 December 2015).

In light of the above anti-abuse clause, an analysis of the existing structures is highly recommended.

2) Removal of Article 15b from the CIT Act concerning the obligation of adjustment of tax deductible costs in case of failing to settle such expenses within the statutory deadline

Lawmakers have removed Article 15b from the CIT Act adopting the Act of 5 August 2015 amending provisions of the Tax Ordinance Act and certain other acts (including the CIT Act) as being too burdensome for taxpayers.

According to the justification to the abovementioned Act, Article 15b of the CIT Act did not achieve

its primary objectives but has instead contributed to increasing the taxpayers' administrative duties and thus increased the costs of their business activity.

Pursuant to the interim provisions, in case of decreasing the tax deductible costs or increasing the taxable revenues based on Article 15b of the CIT Act before 1 January 2016, taxpayers will be entitled to increase their tax deductible costs based on the currently binding Article 15b of the CIT Act also after 1 January 2016 (if they finally settled the due amount).

The Act removing Article 15b from the CIT Act does not provide any interim provision in respect of the taxpayers that have adopted a tax year other than a calendar year.

3) New rules regarding adjustment of tax deductible costs and taxable revenues

On 24 September 2015 the President signed the Act of 10 September 2015 amending the acts regarding the promotion of amicable settlement of disputes.

The Act introduces the new provisions to the CIT Act, according to which, starting from 1 January 2016, a corrective invoice adjusting tax deductible costs or taxable revenues, shall be recognized on a current basis, i.e. in the month in which the corrective invoice is issued/received, rather than with retroactive effect (*ex tunc*, i.e. when the original revenue/costs was recognized).

Pursuant to the new rules, adjustment of tax deductible costs or taxable revenues shall be recognized with retroactive effect (*ex tunc*) only in the case of an accounting error or obvious mistake.

According to the interim provisions and explanations of the Ministry of Finance, the new rules will apply both to adjustments of tax deductible costs/taxable revenues incurred/generated from 1 January

2016, as well as to adjustments of tax deductible costs/taxable revenues incurred/generated before 1 January 2016, if the reason for the correction appears after 1 January 2016.

It should also be noted that the new rules exclude the possibility to recognize the adjustment of tax deductible costs or taxable revenues on a current basis if the cost/revenue relates to a tax liability which had already expired.

If you wish to discuss the impact of the regulation changes on the situation of your company, please do not hesitate to contact us.

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