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Introduction

Majority of new provisions introduced under the amendment of 27 October 2017 of the Personal Income Tax Act, the Corporate Income Tax act and the Act on Flat-Rate Income Tax on Certain Revenues Generated by Natural Persons will come into effect on 1 January 2018.

It should be emphasised that apart from issues immediately connected with the tax system tightening, the amended provisions include numerous significant changes in the scope of the personal income tax, such changes to be faced by both the employers and the employees, and concerning, among others, the income tax threshold, amounts of tax exemptions and the flat-rate tax on renting or taxation applicable to incentive programs. Simultaneously, the introduced amendments are aimed primarily at facilitating the business of small and medium-sized enterprises, and are intended to simplify the currently binding regulations and to make them more clear. This issue of Frontiers in Tax guides you through the most vital amendments.

Our publication will provide also with information about new provisions on the applicability of 50% revenue earning cost to the copyright transfer.

Limited was the group of persons that may apply the increased costs, while the amount, in respect of which this tax preference applies, was increased. The above results from the fact that the amendment provides a finite list of activities, in respect of which said preference may be applied. At present, the basic criterion allowing to take advantage of that privilege is the creative nature of the work and satisfaction of criteria provided for in the definitions of the author and the work within the meaning of the Act on Copyright and Neighbouring Rights.

Undoubtedly, the introduced change will prevent many authors from applying 50% revenue earning costs, although in fact they do meet the prerequisites, referred to in the copyright law.

I trust that the discussed matters will help you to identify your tax obligations and assess effects they bring about.

I hope you will enjoy reading this issue of Frontiers in Tax.

Andrzej Marczak
Head of the PIT Team
Tax Advisory Department
KPMG Poland
Incentive programs taxation in the light of amendment of the Personal Income Tax Act

On 27 October 2017, in the Journal of Laws (item 2175) there was published the Act on Amendment of the Personal Income Tax Act. The amendment introduces numerous vital changes in the PIT provisions, e.g. it determines in detail issues related to taxation of revenues deriving from participation in the so-called employee incentive programs. The changes will enter into force on 1 January 2018.
Incentive programs consist in providing employees, gratuitously or against a partial payment, on the terms and conditions specified in applicable rules and regulations, with financial instruments, i.e., for example, stock options or participation units that, in certain circumstances, give their holders the right to exercise entitlements deriving from a certain instrument, including, among others, the right to acquire certain number of stocks at a certain moment.

Problems with interpretation

Problems, which up to now have occurred with reference to taxation of revenues deriving from participation in incentive programs, have been connected with classification of the source of revenue and the moment of its generation, and have resulted from an inconsistent standpoint of Polish tax authorities. As recently as in 2015 and 2016 said standpoint was contrary to decisions consistently made by administrative courts.

On the one hand, tax authorities held that the revenue was generated upon the share acquisition as the revenue from other sources. On the other hand, however, in accordance with the consistent case-law made by the courts, financial benefits are generated as late as upon the share disposal against payment, and the revenue so generated constitutes capital gains.

In its answer to the above-mentioned problems, the legislator decided to introduce numerous provisions that regulate the above-mentioned matters in a more detailed way.

Double taxation avoidance tools – general principle of determining the source of revenue

Art. 10 sec. 4 of the PIT Act introduces a general principle, in accordance with which revenues obtained gratuitously as part of incentive programs do not constitute capital gains, but are calculated towards the source of revenues deriving from employment relationship.

The above-mentioned provision is an answer to an illpractice of generating artificial remunerating structures with the use of financial instruments for the purpose of a tax gain, a warning about which was included in a notice issued by the Head of the National Fiscal Administration in August 2017 about application of provisions on avoidance of double taxation in the context of the so-called incentive programs.

According to the National Fiscal Administration, the construction consisted in reclassification of remuneration deriving from employment relationship and having the nature of a financial prize – taxed in accordance with a progressive scale with 32% tax rate – to the source of revenues deriving from capital gains – in order to apply 19% tax rate.

The problem occurs in a situation where a financial instrument’s settlement takes the form of paying money to an employee. Thus, the payment of remuneration is artificially divided into remuneration based on employment relationship and payment of a financial prize deriving from employment relationship and artificially hidden in an execution of a financial instrument.
An incentive program, in which an employee participates, must be organised by a joint-stock company (or its dominant entity), from which a taxpayer receives performances or other amounts due based on an employment relationship or an activity performed in person.

**Tax point deferral**

The legislator provided for a possibility of deferring the revenue generation date applicable to the acquisition of shares as part of incentive programs until the final sale of such shares provided that certain conditions indicated in the act are satisfied and the incentive program meets certain requirements:

1. An incentive program, in which an employee participates, must be organised by a joint-stock company (or its dominant entity), from which a taxpayer receives performances or other amounts due based on an employment relationship or an activity performed in person.
2. An incentive program must be set up under a resolution of the general meeting of shareholders of the company.
3. As a result of performance of an incentive program established by the company, a taxpayer actually takes up or acquires shares in that company or its dominant entity.

The above does not apply to a situation where an employee receives only a cash equivalent for his participation in the program and is not given the right to actually take up or acquire shares.

In the contemplated situation there actually occurs a tax deferral as, although the revenue is generated as early as at the stage of the share acquisition, the revenue is not recognized then. The tax point occurs upon the share disposal against payment, which is subject to 19% tax rate.

**Scope of application of the new provisions**

Another vital change is an extension of the catalogue of companies, an acquisition of or subscription for shares wherein permits the deferral of tax due on revenue deriving from such acquisition or subscription until the sale of the shares. Following the amendment, such tax deferral will apply also to shares in companies located outside the European Union and the EEA.

In accordance with the introduced changes, the preference applies to taxpayers that acquire shares in companies, whose registered office or management is located within the territories of countries that concluded with Poland double taxation avoidance agreements. At present the PIT Act provides for an exemption only with reference to shares in companies located within the European Union and the EEA.

Natalia Wytrykowska
Specialist of the PIT Team
Overlapping of social security schemes in the light of lifting the premium limit

As transpires from the bill of 18 October 2017 on Amendment of the Social Security System Act and Some Other Acts, currently at the stage of parliamentary works, the annual limit of the base for retirement and disability premiums accrual, referred to in art. 6 and 7 of the Social Security System Act and applicable since 1999, is to be lifted. It is the legislator’s assumption that the amendment will enter into force on 1 January 2018, however, at the moment of publication hereof discussions are held to suspend the law’s entry into force until 1 January 2019.
In accordance with the provisions currently in force, the annual base for retirement and disability premiums accrual for persons, referred to in art. 6 and 7 of the Social Security System Act, may not be higher than thirty times the value of the estimated average monthly remuneration payable in the national economy in a current calendar year in accordance with the Budget Act. Limitation of the base for premiums accrual applies to premium portions payable by both the employee and the employer.

Imposition of a limit in respect of premiums accrual was aimed at avoidance of an excessive diversification of amounts of retirement pensions to be paid in the future. As a result of economic growth and an inflation increase, the amount constituting an annual base for premium accrual has been constantly growing to hit PLN 127,800.00 in 2017. In practice, the above meant that upon exceeding said amount, the taxpayer was required to cease calculating and transferring retirement and disability premiums, which simultaneously resulted in an increase of the base for accruing health insurance premium and the income tax base.

Consequences of the draft amendments

Upon the entry into force of provisions that lift the premium base limit, the payroll costs attributable to persons who earn more than PLN 10,000.00 gross will rise substantially. The pension and disability premiums will be transferred in respect of the entire revenue, just like it is the case with the health and accident insurance.

The retirement system in Poland is based on a rule of a determined premium, hence a premium increase is assumed to translate into a proportional increase of performances to be paid to the above-mentioned persons in the future. Moreover, an increase of retirement and disability premiums will immediately result in a decrease of a base for calculation of the health insurance premium and the income tax base.

In the bill justification, the legislator assumes that as a result of the envisaged changes, the national budget revenue will grow by PLN 5 billion, which may substantially decrease earnings of highly-qualified employees and significantly increase payroll costs to be borne by the employers. Therefore, both parties will seek solutions that will permit minimizing adverse effects of the changes planned within the scope of social security.

Overlapping of social security schemes as an interpretation guideline

As a rule, an obligation of payment of retirement and disability premiums occurs when one of the prerequisites stemming from art. 6 or 8 of the Social Security System Act is met. When a natural person meets a prerequisite for being covered with one social security scheme only, there occurs only one legal ground for such person’s inclusion in retirement and disability insurance. In such a situation, a premium base is a revenue generated in respect of the above.

Retirement and disability premiums are payable on more than one base where one person carries out more than one business activity, each of which instigates payment of such premiums. Polish insurance law is based on the principle of an obligatory coverage with several social security schemes attributable to each activity carried out. At the same time, there apply certain regulations that permit exclusion of one of the general insurance bases, whereunder applicable are social security schemes that instigate payment of retirement and disability premiums.

Art. 9 sec. 1 of the Social Security System Act, introduces a general principle, pursuant to which the grounds mentioned therein (e.g., employment relationship) should be treated as absolute ones, with reference to which the obligation to cover the employee with retirement and disability scheme occurs even if such schemes overlap.

Conversely, where the obligation to cover the employee with retirement and disability scheme on the basis of an absolute ground and a general one (e.g., sole trader) stems from overlapping social security schemes, under the above-mentioned general principle the obligation to cover the employee with retirement and disability scheme occurs on the basis of...
of an absolute ground, while the same obligation stemming from a general ground is lifted, provided that the base for calculation of retirement and disability premiums on an absolute ground, when calculated in monthly periods, is not lower than the minimum pay for work.

**Overlapping of social security schemes applicable under contracts of employment and to sole traders**

A person that meets prerequisites for being covered with compulsory retirement and disability schemes under the employment relationship and as a result of concurrently acting as a sole trader, is covered with social security scheme deriving from the employment relationship only, which was confirmed among others by the Supreme Court (I UK 484/12), provided that the employment contract guarantees at least the minimum pay for work. In an absence of such a guarantee (e.g., in the case of part-time employment) the exemption applies if the base for calculation of premiums is not lower than the minimum pay for work.

Giving regard to the above and striving for an introduction of a new system of cooperation in the relations with the current employees, Polish entrepreneurs must bear in mind that the type of services rendered under an agreement for cooperation should differ from that attributable to services carried out under an employment contract, and that the agreement concerning activities of a sole trader should bear no characteristics of the employment relationship determined in the Labour Code.
The latest Amendment of the Personal Income Tax Act, the Corporate Income Tax act and the Act on Flat-Rate Income Tax on Certain Revenues Generated by Natural Persons provides, among others, for vital changes concerning applicability of the tax preference available to authors / performers, i.e. 50% revenue earning costs. The new provisions will come into force on 1 January 2018.
Scope of amendment

The main amendments concerning the above-mentioned tax are as follows:

• increasing to PLN 85,528 a year (the amount constituting the upper limit of the first tax band) an upper limit, up to which 50% revenue earning costs may be applied;

• determining a finite list of activities, in respect of which said preference is applicable, where such list includes earning revenues from the following types of activity:
  1. creative, including architecture, interior design, landscape architecture, town planning, literature, fine arts, music, fine-art photography, audio-visual creation, computer software, choreography, string instruments construction, folk art and journalism;
  2. research and development, and education and didactics;
  3. artistic, including the actions of actors and performers, theatre and stage directors, dancers and circus performers, as well as conductors, vocalists, instrumentalists, costume designers and stage designers;
  4. audio-visual production by directors, stage designers, directors of photography and audio engineers, film editors, stunt performers;
  5. journalism.

Currently binding principles

Now, an upper (annual) limit, up to which 50% revenue earning costs may be applied is PLN 42,764 (half of the amount constituting the upper limit of the first tax band).

Moreover, the finite list of activities, in respect of which the preference permitting application of higher (50%) revenue earning costs, is not binding yet. Since the provisions currently in force do not include a more detailed version of art. 22 sec. 9 item 3, they apply to each author / performer that exercises copyright / neighbouring rights within the meaning of provisions on copyright and neighbouring rights.

Effects of changes to be faced by taxpayers

The above-mentioned changes, applicable from the beginning of 2018, will prevent some taxpayers from using the tax preference currently available to them. This situation may apply to some IT specialists, whose activity will no more be classified as creative activity within the scope of computer science / research and development. Certainly, the group of persons that will be unable to enjoy the currently available tax preference is much bigger. The new provisions will be unfavourable for some taxpayers, whose activity results in the creation of a piece of work within the meaning of provisions on copyright and neighbouring rights.

A change that is advantageous for taxpayers is an increase of an amount of costs, to which the discussed tax preference applies (it will be twice the value of the currently applicable limit). In the best-case scenario, taxpayers will save as much as PLN 13,000 a year.

Actions recommended to employers

The changes introduced within the above-mentioned scope under the PIT act amendment should be taken into consideration by, among others, the employers, who pay their employees a fee for the transfer of copyright (and, respectively, by the employees – as regards their annual returns).

Certain modifications may be required with reference to internal regulations concerning the transfer of author’s economic rights to the employer and employment contracts concluded with the employees.

Employers affected by the amendments discussed herein should also analyse whether or not the finite list of activities introduced by the legislator permits application of more advantageous tax provisions to their employees.
Moreover, the increase of the amount, to which revenue earning costs on copyright disposal may be applied, should be reflected in settlements with employees (e.g., in a situation where the costs recognised with reference to a certain employee could enjoy more favourable treatment due to limitations currently in force).

**Practice applied by the tax authorities**

Irrespective of the above issues stemming from the amendment, it should be noted that the tax authorities show more and more restrictive attitude with respect to application of the increased (50%) revenue earning costs, which is reflected in individual interpretations issued recently by the Head of the National Fiscal Information. Giving regard to the above, it is highly recommended to verify the correctness of settlements connected with the copyright transfer by the employee.
Flat-rate tax on renting

Amendments of the Flat-Rate Recorded Revenues Tax Act that will enter into force in 2018 cover in particular issues connected with taxation of renting. Thus, it is worth considering which of the available forms of taxation will prove most advantageous in a certain case.
General remarks

As a rule, persons that receive proceeds from renting, tenancy or similar legal titles are considered to have a separate source of revenue that is subject to taxation.

Landlords may choose one of the two methods of taxation applicable to revenues from renting: general principles or flat-rate on recorded revenues. A decision, which option will prove most advantageous, is not always clear and depends on numerous factors, such as the amount of income, the costs incurred and individual preferences.

If within the time limit provided for by the provisions of law the tenant fails to choose an option of flat-rate on recorded revenues, his income derived from renting will be taxed in accordance with general principles.

Example

Mr Nowak rents out a house. His monthly revenue for renting is PLN 12,000. He earns PLN 144,000 a year. He pays a flat-rate tax. In 2017, he applies 8.5% rate irrespective of the revenue gained. The tax payable for 2017 will be PLN 12,240 (PLN 144,000 x 8.5%). In 2018, amounts payable by Mr Nowak will be higher. The flat-rate tax will amount to PLN 14,000, which stems from the following calculation: (PLN 100,000 x 8.5%) + (PLN 44,000 x 12.5%).

Tax payable for a certain year must be settled by the end of January of the subsequent year with the use of PIT-28 form.

Taking into consideration the above, in particular the change of the tax rate and the amount of costs payable on renting, worth considering is whether in the case of private renting, application of general principles of taxation would not prove more advantageous.

The basic form of taxation applicable to renting is taxation based general principles, that is a tax payable as part of a progressive tax system, in the rate of 18% or 32%.

Flat-rate tax on recorded revenues

At present, flat rate applicable to recorded revenues from renting amounts to 8.5%.

Subject to taxation is the revenue, i.e. a fixed amount received from renting. The incurred costs are of no relevance.

From 2018, applicable will be two tax rates, depending on the revenue earned. Where the annual revenue is up to PLN 100,000, the rate of 8.5% will continue to apply. However, where the landlord earns more than PLN 100,000 a year, he will have to pay 12.5% tax on the surplus.

Taxation based on general principles

The basic form of taxation applicable to renting is taxation based general principles, that is a tax payable as part of a progressive tax system, in the rate of 18% or 32%. A person that prefers paying tax based on general principles is not required to provide the tax office with any information or statements. This method of taxation applies automatically where a taxpayer does not choose an alternative option of paying a flat-rate tax.

Income

Where taxation based on general principles applies, the tax is paid in...
The costs of earning revenue from renting include, but are not limited to:

- costs of real estate agency that acted as an intermediary for renting;
- costs of property renting announcements;
- costs of day-to-day maintenance of the property;
- costs of utilities (gas, water, heating, telephone, internet) if not paid by the tenant;
- costs of maintenance of common areas, lifts, community aerial, intercom and green areas;
- real property tax.

Other expenses that are calculated towards the costs include:

- interest on a mortgage credit incurred by the landlord for the purchase of the residential property rented out,
- property insurance,
- charges payable in respect of the property (e.g. amount payable towards the repair and renovation reserve),
- expenses for ongoing repairs,
- expenses for the purchase of furnishings necessary for renting the property out.

A residential property rented out may also be subject to depreciation, and in such a situation relevant write-offs will constitute an additional tax cost for the landlord. In accordance with the applicable provisions, subject to depreciation are premises owned or co-owned by the taxpayer, acquired or constructed by oneself, complete and fit for use on the day of the premises’ acceptance for use.

The tax for a certain calendar year must be settled by the end of April of the following year, with the use of PIT-36 form. Where the general principles of taxation apply, a taxpayer may take advantage of applicable tax relieves, joint taxation of spouses or a single parent tax allowance.

**Note:**

*The discussed issue refers to persons that do not run their business activity. Where the rental income is obtained as part of the business activity carried out, the principles of taxation are determined in provisions applicable to persons who run their business activity.*
The KPMG analyses and reports are an output of our expertise and experience. The publications take up issues important to enterprises operating in Poland and globally.

Navigating Uncertainty. CEE Perspective
Report was drawn up on the basis of a research concerning global IT leaders and involving the biggest number of respondents ever. In the research participated 4,498 CIOs and IT leaders from 86 countries worldwide, included selected Central and Eastern European countries: Poland, Estonia, Lithuania, Latvia, Czech Republic, Slovakia, Hungary, Albania, Romania, Bulgaria, Croatia, Slovenia, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. The research took place between 19 December 2016 and 3 April 2017.

Automotive industry, Q3/2017 edition
Quarterly report aimed at presentation of the current trends in the automotive industry in Poland covering not only the automotive market, but also industrial production and automotive financial services. The analysis is based on the most recent registration, statistical and market data available. The publication is co-authored by the Polish Automotive Industry Association and KPMG in Poland.

Business tendency survey carried out among automotive firms managers
Business tendency survey carried out among automotive firms managers is a questionnaire-based survey carried out by the Polish Automotive Industry Association and KPMG in Poland at the turn of April and May 2017. It was conducted in order to learn the opinion of automotive firms management on current and future situation of the industry in Poland. The survey was addressed to managers at manufacturing firms and distributors of vehicles, trailers and semitrailers, vehicle bodyworks or sub-assemblies, parts and accessories. 69 respondents participated in the survey.

Venture Pulse Q2 2017. Global analysis of venture funding
Quarterly publication on venture capital, drawn up by KPMG International. It presents venture capital sector from global and local perspective, and provides information on major trends. The research respondents were private companies financed out of venture capital funds, including venture capital firms, corporate entities or private investors of the so-called super angel type. The analysis is based on data gathered in the 2nd financial quarter of 2017.

Furniture industry in Poland
The report is based on analysis of data received from companies, research institutions (chiefly Euromonitor International) as and statistical agencies (Eurostat and the Central Statistical Office). KPMG in Poland, assisted by a research company ARC Rynek i Opinia, conducted a consumer survey and a research at companies operating within the industry. In consumer survey participated a representative sample of 1,016 adult Poles. Respondents were asked about their buying habits concerning furniture, places where they buy furniture, their plans concerning furniture purchase and the manner of financing. The research was also aimed at learning consumer trends and driving factors of the purchase process. For the purpose of the research the Computer Assisted Web Interview was used. Certain data used in the report were obtained as part of a survey, in which participated representative of firms operating within the industry. The survey, in which 106 furniture companies participated, was conducted as the Computer Assisted Telephone Interview.

2017 Global CEO Outlook
In the survey participated 1,261 company managers acting on 10 key markets: Australia, China, France, Germany, India, Italy, Japan, Spain, Great Britain and the United States in 11 major economic sectors: automotive, banking, infrastructure, insurance, portfolio management, healthcare, industry, retail / consumer goods, technologies, power and communications technology. Annual revenue of one-third of the companies exceeds USD 10 billion, and none of the companies recorded annual revenue of less than USD 500 million. The survey was conducted between 21 February and 11 April 2017. A corresponding survey was conducted on a representative sample of presidents of 50 Polish companies.
Contact

Andrzej Marczak
Partner, Head of the PIT Team
Tax Advisory Department
KPMG Poland
T: +48 22 528 11 76
E: amarczak@kpmg.pl

Mateusz Kobyliński
Partner of the PIT Team
Tax Advisory Department
KPMG Poland
T: +48 22 528 11 91
E: mkobylnski@kpmg.pl

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