September 2020

Announcement of amendments to income tax acts aimed at tightening up Polish tax system

On 4 September 2020, the draft bill amending 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 and certain other Acts was added to the list of legislative work and policies of the Council of Ministers.

The key purpose of the bill is to tighten up the Polish corporate income tax and personal income tax systems.

<u>The bill is expected to bring significant systemic changes to the entire domain of income taxes, including expansion of the scope of CIT to certain tax-transparent entities (i.e. partnerships taxed currently only at the partner level).</u>

The review of the key measures and assumptions included therein can be found below.

Linking taxation to the place the income is earned

One of the key measures proposed is to make the amount of tax paid by the largest entities, especially multinationals, dependent on the place where the income was actually earned.

This objective is to be achieved by covering by CIT limited partnerships having their registered office or place of management in the territory of the Republic of Poland and those general partnerships in which income taxpayers participating in the profits are not disclosed, thus helping to mitigate the risk of tax evasion.

Furthermore, the bill is to introduce solutions aimed at improved recovery of tax claims related to income earned on the sale of shares (stocks) in real estate companies by non-residents. **The obligation to settle the tax on the sale of shares in real estate companies is to be shifted from the seller to the real estate company.**

Another measure aimed at tightening up the Polish tax system is to impose the obligation **to prepare and publish the information on the implemented tax policy** on selected CIT payers.

The bill provides for changes in the currently applicable transfer pricing regime, consisting, among others, in extending the application of the arm's length principle, especially where the beneficial owner is seated in a tax haven, and expanding the scope of documentation obligation for such transactions.

Furthermore**, the regulations on the sources of income earned by non-residents in the territory of Poland** are to be adjusted to the standards set out by double taxation treaties amended by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

Other changes aimed at sealing the tax system

Another measure aimed at tightening up the Polish tax system is the **limited possibility of deducting loss** in a situation where the taxpayer took over another entity and/or was made an in-kind contribution in the form of an enterprise or an organised part of the enterprise or a cash contribution, for which the taxpayer purchased the enterprise or an organised part of the enterprise.

The bill provides for **clarification of the provisions set out in Article 14a of the CIT Act** (pertaining to tax consequences of settlement of liabilities through cash consideration) by emphasizing the fact that they also relate to tangible property transferred by a company or cooperative society in liquidation to its partners (shareholders and/or members of the society) by way of division of the assets of the legal person in liquidation.

The amendments are also to introduce restrictions on making depreciation rate adjustments in a situation where the taxpayer applies exemptions, limiting the non-actual depreciation of fixed assets and adapting the rules for determining the amount of depreciation write-offs specified in the CIT Act to the principles set out in the Accounting Act.

Moreover, the bill provides for fixing the ratio used to calculate the maximum amount of debt financing costs to be deducted in the given tax year.

Other changes related to CIT

The upper limit of revenues earned in the current fiscal year, entitling to use the reduced 9 percent CIT rate, **is to be increased (from EUR 1.2 million to EUR 2 million).**

The proposed amendments are also to eliminate possible interpretation doubts related to the limit of the surplus of debt financing costs.

Changes in the area of transfer pricing will also cover the rules of making transfer price adjustments along with the rules on establishing the local file and the relevant declaration. The goal is to limit unnecessary administrative and red-tape burden for companies navigating their way through the crisis induced by COVID-19.

Another amendment relates to the exemption from tax on revenues from commercial buildings. Namely, under the new rules, the exemption may be applied by taxpayers also in a situation where after 31 December 2020 (the end of the current exemption period) the nationwide state of epidemic emergency is still in effect.

Changes related to PIT

Other amendments related to PIT provide for restrictions on making depreciation rate adjustments in a situation where the taxpayer applies exemptions, limiting the non-actual depreciation of fixed assets and adapting the rules for determining the amount of depreciation write-offs specified to the principles set out in the Accounting Act.

Furthermore**, the lawmakers plan to eliminate the so-called abolition relief** (consisting in deducting an amount equal to the tax surcharged in Poland on income earned abroad and subject to settlement in Poland from the actual tax amount) and to allow PIT payers to benefit from the tax exemption on revenues from commercial buildings (analogous to the one proposed in CIT).

Flat-rate income tax on certain revenues generated by natural persons

Amendments to the Act on Flat-Rate Income Tax on Certain Revenues Generated by Natural Persons are also planned. They aim at **increasing the attractiveness of flat-rate taxation** of recorded revenues and expanding the group of taxpayers who will be able to apply it.

The amendments provide for increasing the upper revenue limit for flat-rate taxation to EUR 2 million and the revenue limit entitling for quarterly flat-rate payments.

It is also planned to eliminate most of the cases in which certain activities are excluded from flat-rate taxation of recorded revenues. This will be achieved by changing the definition of a liberal profession, lowering certain flat-rates on recorded income, and unifying the amount of the flat-rate for rent and services related to accommodation.

Other changes will also pertain to the application of the fixed amount tax, including exemption from fixed amount tax in a situation where the taxpayer's spouse conducts the same business activity and a possible temporary increase in employment by entrepreneurs paying the fixed amount tax.

Stage of legislative works

The draft act containing detailed regulations in the scope discussed herein is expected to be passed by the Council of Ministers in the **third quarter of 2020.**

If you would like to learn more about the issue discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

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