

January 2021

The new WHT collection mechanism further postponed till 30 June 2021

On 30 December 2020, the decrees of the Minister of Finance, Development Funds and Regional Policy amending the decrees on excluding or limiting the application of Article 26(2e) of the CIT Act and Article 41(12) of the PIT Act were published in the Polish Journal of Laws.

The decrees provide for yet another suspension of the provisions under which PIT and CIT payers who make cross-border payments for certain intangible services (e.g. advisory, legal, market research and advertising services), as well as fees for licenses, interest or dividends, where such payments exceed the threshold of PLN 2 million annually, are obliged to pay the withholding tax at the national rate first, and only then can they apply for a refund of any overpayment (under the 'pay and refund' mechanism). As a result, entry into force of the new WHT collection mechanism was postponed till 30 June 2021.

Postponed tax collection procedure

Essentially, the decrees pertain to the new obligations imposed on WHT remitters by the Act of 23 October 2018 amending the income tax acts (Journal of Laws, item 2193),

according to which, Polish tax remitters paying out interest, dividends, royalties or making payments for certain intangible services to foreign taxpayers are first obliged to collect WHT (at the standard rate of 20 percent or 19 percent) and only once it is collected, foreign taxpayers or the remitters themselves (if they bore the economic burden of tax) may apply for a refund of the collected WHT.

The application of the 'pay and refund' mechanism in WHT collection, where there a legal grounds for exchanging tax information with the country in which the taxpayer has their seat or place of management or where dividends are paid out, has been the subject of many controversies and practical issues and, as such, further postponed by the Ministry. The draft explanatory notes issued by the Ministry did not, in fact, dispel all doubts related to the mechanism application provisions.

Regulations still in force

It should be emphasized, however, that the postponement applies only to the mechanism of withholding tax collection.

The regulations obliging tax remitters to exercise due diligence when verifying the conditions of applying WHT exemptions or lower WHT rates, and to qualify the recipients

as beneficial owners in line with a broader, amended definition of the term, including the obligation to verify whether they conduct actual business activity in their country of residence, still remain in force.

Further developments

According to the explanatory memorandum to the decrees, further suspension of the deadline stems from the exceptional circumstances of the legislative process, due to the COVID-19 pandemic, resulting in a delay in the works on amending legal provisions on WHT collection.

The amended provisions have been put out to consultation with the representatives of business community. The amendments will concern in particular the subjective and objective scope of the procedure of compulsory collection of withholding tax at the national rate, with the right to apply for a refund of all or a part of the tax.

The Ministry of Finance announced that the works on the new regulations are to be finalized by 30 June 2021.

Please contact us for further information

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

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