

October 2021

Tax changes brought by the Polish Deal adopted by the Sejm

On 1 October 2021 the Sejm adopted the bill amending the PIT Act, CIT Act, and certain other acts (hereinafter “the Bill”), bringing a package of tax changes to the tax legislation under the Polish Deal program.

A summary of key measures provided therein can be found below.

Amendments to PIT regulations and health insurance contributions

The most important changes in the area of PIT and health insurance contributions include:

- increasing the personal income tax-free allowance to PLN 30,000 annually for taxpayers settling PIT using the tax scale;
- raising the threshold for entering the highest personal income tax bracket of 32 percent to PLN 120,000;
- elimination of the possibility of deducting the health insurance contribution from PIT;
- increasing the amount of the health insurance contribution for:
 - entrepreneurs settling PIT on general terms – up to 9 percent of the actual income,
 - entrepreneurs taxed with flat PIT – up to 4.9 percent of the actual income,
 - entrepreneurs taxed with the PIT lump sum - the amount of the contribution will depend on the level of revenues and the average monthly remuneration;

- introducing a “middle-class relief” to cover individuals working under a contract of employment and entrepreneurs settling PIT according to the tax scale with annual revenue between PLN 68,412 and PLN 133,692 – to compensate for the planned increase in the health insurance contributions);
- new tax incentive, the “return relief”, offered to individuals with the Polish citizenship (or the Pole’s Card) which move their place of tax residence to Poland and for the last 3 years did not have tax residence in Poland.

In the course of legislative works in the Sejm to the Bill was also introduced special exemption (PIT “0”) for the seniors, i.e. the exemption from PIT for the individuals who despite reaching retirement age decide to work (up to 85,528 PLN of the annual income), and the exemption for large families – for the taxpayers bringing up at least four children (up to 85,528 PLN of the annual income).

The Bill also provides amendments to the provisions on tax depreciation of private property introduced into the company’s assets, consisting i.e. in extending the catalogue of assets used in the conducted business activity the sale of which, once they cease to be used in business activity, is classified under income tax as revenue from business operations, as well as excluding, beginning from 1 January 2023, the depreciation write-offs on residential buildings and premises

from tax-deductible costs and revoking the possibility of taxing the so-called private lease (lease by individuals) on general principles to replace it with lump-sum taxation.

Minimum income tax

The Bill provides for introduction of a new minimum income tax, payable by CIT taxpayers, including tax capital groups and foreign entities having permanent establishment for tax purposes in Poland, which:

- report losses from the sources of income other than capital gains; or
- report the share of income in the revenues (other than capital gains) amounting to 1 percent or less.

The rate of the minimum income tax is to be set at 10 percent.

The taxable base is to be calculated as the sum of:

- 4 percent of the value of revenues from the sources other than capital gains;
- “excessive” debt financing costs, incurred for the benefit of related entities (in principle, exceeding 30 percent of tax EBITDA);
- the value of deferred income tax resulting from the disclosure of non-depreciated intangible assets in tax settlements, to the extent it increases gross profit or decreases gross loss;

- the value of costs regarding purchasing of some services and intangible rights (within the scope and definition similar to the existing Article 15e of the CIT Act) in the part exceeding 5 percent of tax-EBITDA plus PLN 3 million.

The amount of the minimum income tax due will be deductible from CIT calculated according to general rules for three consecutive tax years after the given tax year in which the tax was paid.

The current regulation of Article 15e of the CIT Act will be repealed. The taxpayers, who before the end of the tax year starting before 1 January 2022 acquired the right to deduct non-deductible costs in a given tax year based on Article 15e, will retain the right to deduction after 31 December 2021 according to the rules set out in this regulation. The interim provision prohibits also the possibility to renew advance pricing agreements (APA) concerning acquisition of intra-group services, which start to apply in the period from 1 January 2018 to 31 December 2021 and which exclude the limitation resulting from the current Article 15e of the CIT Act.

The minimum income tax will not apply to taxpayers starting their business activity (in the year in which they commence their activity and in two consecutive tax years), taxpayers being financial enterprises, the companies in which shareholders or partners are natural persons and which do not possess shares in other companies, as well as the groups of at least two companies being the Polish tax residents, in which one company possesses for the whole tax year directly 75 percent share in the capital of the other companies forming the group, the tax year of the companies is the same and calculated for the tax year share of the total income of the companies in their total revenues is higher than 1 percent.

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Hidden dividend

The Bill introduces also to the CIT Act the regulation on so-called "hidden dividend", which prohibit to treat as tax deductible the costs incurred by the company "in connection with the supply" provided by the entity related to this company or to the shareholder or partner of this entity, if such costs can be considered as a hidden dividend.

The costs can be considered as a hidden dividend, if:

- their amount or the moment in which they are incurred depend in any way from generating the profit by the taxpayer or the amount of the profit; or
- the taxpayer acting rationally will not incur such costs or will incur such costs in lower amount, if comparable supply would be performed by unrelated entity; or
- the costs encompass the remuneration for the right to benefit from the assets, which were the property of the shareholder or the entity related to the shareholder before the taxpayer was incorporated.

The date of entry into force of the regulations on hidden dividend has been postponed to 1 January 2023.

Tax on shifted profits

The Bill introduces also the regulation limiting shifting of the profits to related entities from the jurisdictions of low effective taxation. These regulations will constitute a new source of income subject to taxation at source.

By shifted profits it will be understood the costs incurred directly or indirectly for the benefit of related entity, if:

- the tax actually paid by this entity is lower by 25 percent from the amount of tax that would be due from this entity according to the Polish law; and
- the above costs constitute at least 50 percent of the revenues earned by this entity.

The regulations concerning the tax on shifted profits will not apply to the costs incurred for the benefit of related entity, which is subject to tax on all its income in the EU member state (or the member state of the European Economic Area) and conducts real economic activity in this state.

Changes in WHT

The Bill includes also the long-awaited amendments to the WHT collection system. The scope of the "pay and refund" mechanism is narrowed down to passive receivables, paid mainly as interest, dividends and royalties, only to related entities (within the meaning of transfer pricing regulations). Dividends paid to Polish residents will also be excluded from the "pay and refund" mechanism.

The Bill also extends the scope of the opinion on the application of withholding tax exemption (WHT clearance opinion) – on the preferences provided for in double tax treaties. The definition of the beneficial owner has also been made more precise. It will also be possible to use a copy of the certificate of residence, regardless of the value of the transaction, provided that the information resulting from the submitted copy of the certificate of residence does not raise reasonable doubts as to compliance with the facts.

New innovation reliefs scheme

The Bill brings about a suite of innovation-targeted tax reliefs, namely:

- relief for entities hiring innovative employees offered to taxpayers who obtain income from business activity, and who incur costs related to employing highly qualified employees involved with research and development;
- prototype relief covering test production of a new product or of marketing such a product;
- pro-growth relief to increase revenues from product sales;
- IPO relief offered to companies making initial public offerings or investing in such companies;
- robotization relief, consisting in reducing the tax burden of the purchase of brand-new industrial robots as well as software and accessories needed to operate such robots.

The bill is also to update the R&D provisions by providing for the possibility to jointly use the R&D relief and the IP Box scheme. Moreover, taxpayers having the status of research and development centres (R&D Centres) may benefit from a deduction of eligible costs incurred in a given tax year in relation to R&D activities amounting to 200 percent, including eligible costs of obtaining and maintaining a patent.

Amendments to the Estonian CIT regulations

The Bill provides extending the Estonian CIT scheme application to limited partnerships and limited joint-stock partnerships.

At the same time, the requirement to incur capital expenditures was abandoned, as well as the condition regarding the upper limit of taxpayers' revenues taxed with a lump sum, and consequently also from the additional tax liability.

The Bill postpones also the taxation of income from retained profits generated in the period of scheme application to the time of their actual distribution.

Transitional lump-sum tax

The Polish Deal also provides a solution encouraging disclosure of the income which has not been subject to taxation. PIT and CIT taxpayers who, from October 2022 to March 2023, will disclose their income and the amount of tax they should have paid, as well as describe the source of this income and the way it was transferred abroad, will be able to benefit from taxation of this income at the rate of 8 percent.

This regulation will not apply to the income that arose as a result of committing a crime in connection with fiscal crime or fiscal offense or committing a fiscal crime or fiscal offense (except the situations in which the head of the tax office was notified about the committed crime or offense) and to entities subject to tax proceedings or tax audit at the date of submission of the application.

Changes in VAT

The Bill introduces also the provisions on VAT groups. Under these regulations, the entities having financial, economic, and organizational relationships will be able to make joint VAT settlements.

A VAT group may be established by taxpayers with their registered office in the territory of Poland and entities which conducts its business activity in the territory of Poland through a branch located in Poland.

The VAT groups will be available from 1 July 2022.

The changes will also introduce the option of taxing financial services that currently benefit from VAT

exemption. A taxpayer conducting business in the field of financial services will be able to choose whether to take advantage of the exemption or to choose the option of taxing the provided services with VAT.

Other changes

The Bill includes also:

- a consolidation relief for entities bearing the so-called eligible expenses for the acquisition of shares or stocks in a company. Such entities may reduce its tax base by expenses incurred up to PLN 250,000;
- a new "Polish Holding Company" regime, under which the holding companies may apply a scheme under which they will be authorized to apply an exemption from taxation of capital gains from the sale of shares in subsidiaries and, at the same time, use only a 95 percent participation exemption for dividends (instead of a 100 percent relief under general terms);
- regulations regarding the place of effective management, to prevent the practice of establishing foreign entities by Polish residents that are effectively managed from Poland, but their income is taxed in the country of the entity's seat;
- changes regarding the tax consequences of reorganization and restructuring, including the introduction of the principle of tax neutrality only for the first exchange of shares and making the tax neutrality of mergers or divisions of companies dependent on the fact that the shares in the acquired or divided entity were not purchased or acquired as a result of an exchange of shares or allocated in the result of another merger or division of entities;

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- changes in transfer pricing, consisting in i.e. extending the deadline from 7 to 14 days for the submission of local transfer pricing documentation by the taxpayer at the request of the tax authority, clarification of the provisions on the so-called safe financial harbor or simplification of the rules for making transfer pricing adjustments;

- limitation of tax depreciation in real estate companies;
- enabling the conclusion between the investor and the tax authority of the so-called an investment deal, i.e. an agreement on the tax consequences of a planned or commenced new investment located in Poland.

The Bill passed by the Sejm has been forwarded to the Senate.

Most of its provisions are expected to enter into force on 1 January 2022.

If you would like to learn more about the issues discussed, do not hesitate to contact us.

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