

November 2021

Amendments to tax acts brought by the Polish Deal

On 29 October 2021, the Polish Parliament passed the bill amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts, containing an amendment package provided for under the Polish Deal Program. The bill now awaits the President's signature.

Below we present the key amendments brought about by the Polish Deal, which will enter into force generally on 1 January 2022.

Amendments to PIT regulations

The most important amendments in terms of PIT and health insurance premiums introduced under the Polish Deal include: increasing the personal income tax-free allowance to PLN 30 thousand annually for taxpayers using tax scale; raising the threshold for entering the highest personal income tax bracket of 32 percent to PLN 120 thousand; eliminating PIT deductibility of health insurance premiums and increasing health insurance premiums for entrepreneurs settling PIT in line with general rules (up to 9 percent of the actual income), entrepreneurs applying the flat PIT rate (up to 4.9 percent of the actual income) or the lump-sum PIT (the amount of the premium is to depend of the income and the average remuneration in national economy).

At the same time, the Polish Deal program introduces the "middle-class relief" to cover individuals working under a contract of employment and entrepreneurs applying the tax scale with annual revenue between PLN 68,412 and PLN 133,692, to neutralize the negative effect of revoking deductibility of health insurance premiums.

Other PIT incentives brought about by the bill include the "return relief" (to be offered to individuals moving their place of tax residence to Poland, having a Polish citizenship or holding a Polish Charter [Karta Polaka] who remained non-Polish tax residents for the last three years), the "0" PIT incentive for pensioners (i.e. a tax exemption for individuals who, despite reaching the retirement age, decide to remain professionally active, with revenue of up to PLN 85,528 annually) and "0" PIT for large families (i.e. a tax exemption for taxpayers raising at least four children, with revenue of up to PLN 85,528 annually).

The amendments are also to impact provisions on tax depreciation, inter alia, through: extending the catalog 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, excluding write-offs on residential buildings

and premises from tax-deductible costs, and excluding the possibility of taxing the so-called private lease on general principles to replace it with lump-sum taxation.

Amendments to CIT regulations

In terms of CIT, the Polish Deal provides for imposition of a new minimum income tax due from CIT payers, including tax capital groups and foreign entities having their establishments in Poland, reporting losses from a source of revenue other than capital gains or for which a share of income from a source of income other than capital gains in revenue other than capital gains amounts to 1 percent or less.

The new levy is to be set at 10 percent of the taxable base, calculated as the sum of:

- 4 percent of the value of revenues from sources other than capital gains;
- "excessive" debt financing costs incurred for the benefit of related entities (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 of purchase of particular services or intangible rights (with a scope and definition similar to those provided by the currently existing Article 15e of the CIT Act, which is also to be repealed) incurred for the benefit of related entities, in the part exceeding 5 percent of tax-EBITDA, plus PLN 3 million.

The amendments are also to include in the CIT Act the regulations limiting shifting of profits, i.e., transfer of income to related entities from jurisdictions of low effective taxation.

Furthermore, they are also to bring new provisions on the “hidden dividends”, which prevent companies from deducting costs incurred in connection with payments made 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 provisions on hidden dividends are to become effective on 1 January 2023.

Other CIT amendments brought about by the Polish Deal include: extending the Estonian CIT scheme application to limited partnerships and limited joint-stock partnerships and relaxing the conditions for using it, a raft of changes related to tax consequences of reorganizing and restructuring proceedings, introducing the Polish holding company scheme, under which holding companies will be authorized to apply an exemption from taxation of gains from the sale of shares in subsidiaries (but, at the same time, use a participation

exemption for dividends amounting only to 95 percent, instead of a 100 percent relief under general terms), introducing regulations regarding the place of effective management, as well as changes to WHT provisions, primarily consisting in narrowing the scope of application of the pay and refund mechanism to passive payments made to related entities, clarifying the definition of a beneficial owner and extending the scope of the opinion confirming the taxpayer’s entitlement to use WHT exemption to cover reliefs provided for in double taxation treaties.

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.

Amendments are also to be introduced to R&D relief provisions, under which taxpayers having the status of research and development centers (R&D Centers) 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. Importantly, the amendments provide for simultaneous use of the R&D relief and IP BOX scheme.

Amendments to VAT provisions

Furthermore, the bill introduces provisions on VAT groups. Under the new scheme, 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 conducting business activity in the territory of Poland through a branch. The provisions on VAT groups are to enter into force on 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 amendments

Other amendments brought about by the bill include:

- a consolidation relief for entities bearing eligible expenses for the acquisition of shares in companies. Such entities may reduce

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their tax base by expenses incurred up to PLN 250,000;

- introduction of transitional lump-sum taxation, i.e., a form of tax abolition for PIT and CIT payers who, from October 2022 to March 2023, will disclose their income and the amount of tax they should have paid, as well as provide information on the source of this income and who, in return, will be able to take advantage of taxing this income with a lump-sum tax of 8 percent;
- extension of the deadline for submission of the Local File from 7 to 14 days at the tax authority's request, clarification of financial safe harbor provisions, and simplified rules for making transfer price adjustments;
- changes to the lump-sum taxation of recorded revenues;
- limiting depreciation of assets of real estate companies;
- enabling concluding investment deals between investors and tax authorities, setting forth tax consequences of a new investment planned or commenced in Poland.

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

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