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Draft bill introducing amendments to income tax acts aimed at tightening up the Polish tax system

On 29 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, principally aimed at tightening up the Polish tax system, was submitted to the lower house of the Polish Parliament.

The review of the key amendments included therein can be found below.

Limited partnerships and certain general partnerships to become CIT payers

The draft bill provides for **extending CIT obligations** to:

- **limited partnerships** having their registered office or place of management in the territory of Poland; and
- **general partnerships** having their registered office or place of management in the territory of Poland, **in which general partners are not only natural persons**, unless the partnership submits to the head of the competent tax office a relevant **information on PIT payers** who are entitled (directly or via entities non-taxable for income tax purposes) to a **share in the partnership's profits** or an update of such information, within 14 days from the date the change was made.

At the same time, however, the draft bill provides for a tax exemption on **the portion of revenue earned by limited partners** through shares in a limited partnership.

The exemption will **encompass 50 percent of the revenue earned by a limited partner** through shares in a limited partnership, however, **no more than PLN 60k annually**.

Furthermore, the exemption will not apply in situations where the nature of relationships between general partners in limited partnerships or the way of managing the limited partnership would suggest that the partners' primary intention behind the establishment of such a partnership is tax optimization.

Moreover, the bill is to introduce an exemption from the application of the general anti-avoidance regulations for limited partners on income earned through shares in profits generated in non-artificial operating activities.

Essentially, this means that the income generated by limited partnerships (and certain general partnerships) which, up to now, have been treated for CIT purposes as tax-transparent entities, is to be covered by **CIT (at the partnership level) and PIT (at the partner level)**.

Report on the implementation of tax strategy

The bill imposes on certain taxpayers a requirement to **prepare and publish a report on the implementation of tax strategy** in the given tax year.

The reporting obligation is to be placed on:

- taxpayers whose revenue **exceeded EUR 50 million** in the given tax year;

- tax capital groups.

Unlike the original draft, real estate companies are to be excluded from the reporting obligation.

The report must consider the nature, type and size of the taxpayer's business activity and include:

- description of the **processes and procedures ensuring performance of taxpayers' obligations arising from tax regulations and proper obligation implementation**, as well as an overview of forms of the taxpayer's voluntary cooperation with the National Revenue Administration (e.g. under a cooperation agreement entered into with the Head of the National Revenue Administration);
- description of **how the taxpayer performs their tax-related duties on the territory of Poland** along with the information on the number of reports on tax arrangements submitted to the Head of the National Revenue Administration, grouped by the type of tax they apply to;
- information **on controlled transactions, the value of which exceeds 5 percent of the balance sheet assets**;
- notification on the **submitted applications for issuing declaratory and binding rulings**, binding rate information and binding excise information;

- information on **settlements made in countries that encourage abusive tax practices.**

Importantly, the list presented above is not exhaustive and may be extended. Pursuant to the explanatory memorandum to the draft bill, taxpayers' reports should include all additional data, which, in the taxpayers' best judgment, should be disclosed. In fact, correct submission of the report may require from taxpayers to analyse separate acts and regulations and to explain the manner of making decisions in tax matters, indicating the persons and organizational units involved.

The report should be presented **within 9 months from the deadline for submitting CIT returns.**

Failure to comply with the new reporting obligations may result in a **fine of up to PLN 250k (the original draft provided for a fine amounting to PLN 1 million).**

Changes related to transfer pricing

Importantly, the draft bill brings about a raft of transfer pricing-related amendments.

These relate, in particular, to **extending the application of the arm's length principle**, especially where the **beneficial owner is seated in a tax haven** (i.e. a country or territory employing harmful tax competition).

The obligation of preparing a Local File will be imposed also on taxpayers and companies without legal personality for non-controlled transactions with entities having their place or residence, seat or place of management in a tax haven, provided **that the transaction value in the given tax year exceeds PLN 100k.** This provision will apply accordingly to taxpayers and companies without legal personality for controlled and/or non-controlled transactions if the beneficial owner has their place or residence, seat or place of management in a country

or territory employing harmful tax competition.

For transactions with tax havens, the Local File should equally contain an **economic justification** for making the transaction, especially a description of the **expected economic and tax benefits.**

The draft bill introduces a wide range of temporary facilitation measures to alleviate the impact of Covid-19, including:

- **exemption from the requirement to report a tax loss** in the tax year starting after 31 December 2019, when the state of epidemic threat or the state of epidemic induced by Covid-19 was in force in Poland, to be relieved from the duty of drawing up transfer pricing documentation in transactions with domestic entities, provided that the revenue earned in the said tax year by a related entity which failed to meet this condition was lower by at least 50 percent than the total revenue earned in the corresponding period of the previous tax year;
- **exemption from the requirement to hold a declaration issued by the related entity stating that the entity made transfer price adjustments** in the same amount for taxpayers making transfer price adjustments for the tax year when the state of epidemic or the state of epidemic threat was in force;
- facilitations related to **signing declarations on keeping a Local File** submitted for a given tax or when the state of epidemic or the state of epidemic threat were in force.

Other changes

Other amendments brought by the bill include:

- **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, in a situation where the main intention behind such activities was an unjustified reduction of income (or increase of loss) of another enterprise or an organised part of the enterprise;

- shifting the **obligation to settle tax on the sale of shares in real estate companies** to the real estate company. Additionally, compared to the original draft, **the definition of a real estate company was changed.** An entity other than a natural person may be considered a real estate company if on the first day of a tax year, the percentage share of real estate in Poland or rights to such real estate in the total market value of the company amounted to at least 50 percent. However, **in order to recognize entities other than those commencing business activity as real estate companies, the balance sheet value of their assets will be decisive;**
- adjustment of the **regulations on the sources of income earned by non-residents in the territory of Poland** 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);
- **clarification of the provisions set out in Article 14a of the CIT Act** (relating 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

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partners (shareholders and/or members of the society) by way of division of the assets of the legal person in liquidation;

- **introduction of a limit on deducting the relief referred to in Article 27g of the PIT Act** (commonly referred to as 'abolition relief') to the amount not exceeding the tax-reducing amount, i.e. PLN 1360. This limitation will not, however, apply to income earned for work or services performed outside the land territory of states;
- restrictions on making **depreciation rate adjustments** in a situation where the taxpayer applies CIT exemptions;
- **increasing (from EUR 1.2 million to EUR 2 million) the upper limit of revenues** earned in the current fiscal year which entitles taxpayers to use the **reduced 9 percent CIT rate**;
- possibility to apply **the exemption from tax on revenues from commercial buildings** 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;
- introduction of a solution **entitling PIT payers to benefit from the tax exemption on revenues from commercial buildings** (analogous to the one proposed in CIT);
- increasing the upper revenue limit for **flat-rate taxation** to EUR 2 million and the revenue limit entitling for quarterly flat-rate payments;
- elimination of 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;

- **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.

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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KPMG offices

Warsaw

ul. Inflancka 4a
00-189 Warsaw
Tel. : +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Gdańsk

al. Zwycięstwa 13a
80-219 Gdańsk
Tel. : +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków

ul. Opolska 114
31-323 Kraków
Tel. : +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Katowice

ul. Francuska 36
40-028 Katowice
Tel. : +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań

ul. Roosevelta 22
60-829 Poznań
Tel. : +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Łódź

ul. Składowa 35
90-127 Łódź
Tel. : +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Wrocław

ul. Szczytnicka 11
50-382 Wrocław
Tel. : +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl



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