

Polish tax reform: changes in the WHT mechanism scheme

On 24 August 2018, the Polish Ministry of Finance published a bill amending the WHT mechanism in Poland ('the Bill').

On 4 October 2018, Poland's lower house of parliament completed its first reading of the Bill.

The Bill is not yet in force, but is expected to apply to tax withheld 2019 onwards, and to annual payments of the same taxpayer, which exceed PLN 2 mln. (approx. EUR 500.000).

The draft bill changes the withholding tax ('WHT') settlement scheme for double tax treaty (DTT) reclaims as well as for reclaims based on EU law (so-called 'Aberdeen claims').

Main measures of the Bill

a. Modification of the WHT mechanism scheme

The proposed changes concern WHT on payments for which the total (gross) amount paid to the benefit of the same taxpayer (for instance, an investment fund), by the same tax remitter (paying agent/bank), in a given tax year, exceeds PLN 2 mln. (approx. EUR 463,000). According to Polish law, the paying agent is the bank through which the securities are traded.

From a Polish point of view, the tax remitter is the Polish bank where the Polish securities are deposited.

Current rules will remain applicable up to this amount and the application of a WHT exemption and a reduced DTT rate will be possible.

If the limit is exceeded, WHT will be levied on the surplus amount, based on a statutory tax rate (i.e. 19% for dividends or 20% for royalties and interest).

WHT will be levied by the Polish WHT remitter in the hands of which the recipient is maintaining the securities or an omnibus account.

An exemption at source for entities exceeding the threshold should still be possible but would need to be requested.

In case the tax has already been collected, there should be a possibility for tax refund, based on a new procedure (allowing, inter alia, for an electronic filing).

b. Simplification rules

The draft introduced two simplification rules, which allow the application of WHT reliefs in both cases, irrelevant whether the threshold of PLN 2 mln. has been exceeded or not. The rules are as follows:

- WHT remitter provides the tax authority with the WHT statement confirming that all formal requirements for exemption have been met.
- Obtaining an opinion from the tax authority that the application of a tax exemption to the given taxpayer is applicable.

c. Summary

The amount of dividends and interest (altogether) paid by one tax remitter to the particular fund	Scenario no.	Documents to be provided by the taxpayer	Documents to be provided by the tax remitter	WHT	Procedure
		Certificate of residence and statement confirming fulfillment of exemption conditions received by the authorities	Statement that the tax remitter has documents required by the law that justify the application of the particular tax preference		
< PLN 2 mln.	a)	Provided	N/A	No WHT	N/A
	b)	Not provided	N/A	Yes	Old (current) rules
> PLN 2 mln.	c)	Provided	Provided	No WHT	N/A
	d)	Provided	Not provided	Yes — but only for the surplus over PLN 2 mln.	New rules
	e)	Not provided	N/A	Yes	Old rules for WHT suffered (basic amount of PLN 2 mln.) and new rules for WHT (for the surplus over PLN 2 mln.)

d. Narrowing of the definition of beneficial owner

- A foreign resident must show that he/she decides, on his/her own, about the income received and bears economic risk associated with income loss (at least partially).
- Additionally, he/she has to conduct genuine business activity in his/her state of residence.

The confirmation of the status of the beneficial owner is required to apply for the reduced WHT rates in each case.

The way forward

The new rules should not impact already paid WHT and pending WHT reclaims.

They will, however, become applicable on 1 January 2019.

We are of the opinion that the new rules should particularly affect taxpayers who benefitted from the earlier exemption and who receive large dividend payments from Poland.

In those cases, the obligation to collect WHT by the WHT remitter may have a negative cash-flow effect, as the refund process should take at least six months.

Therefore, such companies should have a closer look at the changes and new requirements for the exemption at source.

We can help you understand new requirements related to the exemption and assist you in implementing all the relevant steps to apply for the exemption.

In addition, KPMG can assist you in filing WHT reclaims under the new tax refund procedure.

Should you have any question related to the above, please contact us.