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## New draft Act on the Polish “REITs” dated 19 May 2017

**The Ministry of Finance has published a new draft Act regarding companies operating on the real estate rental market dated 19 May 2017 which introduces significant changes in comparison with the earlier draft bill dated 12 October 2016.**

According to the explanatory notes, the aim of the new regulations is to introduce into Polish legislation certain provisions that will enable development of companies operating on the real estate rental market (“SRWN” as per the Polish acronym) and increase the involvement of domestic private capital on this market. Similar regulations regarding companies investing in the real estate market (i.e. REITs – Real Estate Investment Trusts) have been already existing for many years in a number of other countries.

The expected benefits from implementation of the new regulations include popularization of investments in the real estate market, especially among individual investors, due to preferential taxation of income derived from investments in SRWNs as well as development of the domestic capital market.

Below, we present the most important amendments proposed in the new draft Act on REITs.

### The definition of SRWN

According to the new draft bill, a SRWN must operate as a joint stock company with its registered seat or place of effective management in the territory of Poland and its primary purpose must be the regular distribution to its shareholders of income derived from rental of real properties,

including income derived through its qualified subsidiaries. Shares of SRWN must be admitted to trading on the Polish regulated market.

Moreover, carrying out business activities by the SRWN will be conditional on its entry into the register of SRWNs kept by the Polish Financial Supervision Authority.

### Definition of a real property

Pursuant to the draft bill, real property should be understood as buildings permanently fixed to the land or parts of thereof, if, under the specific provisions, they constitute an object of ownership separate from the land. Importantly, compared to the previous draft bill, the current one envisages that apart from commercial real properties, SRWN may also invest in residential buildings and apartments.

### SRWN statutory requirements

The new draft bill also provides changes to the statutory requirements that should be met by SRWNs, i.e.

- 1) the minimum amount of share capital is decreased from PLN 60 million to PLN 50 million;
- 2) the level of profit before tax obtained from the rental of real properties or their parts as well as from sale of real properties or their parts is increased from 70 percent to 80 percent.

Moreover, the new draft bill introduces the requirement to review the fulfillment

of the statutory conditions regarding the structure of assets, income, liabilities and dividend distributions, imposed on SRWNs, by an auditor at the end of every financial year.

The new regulations envisage also an increase of the minimum number of board members from 2 to 3 and introduce additional qualification requirements with respect to at least two of them. Furthermore, at least one of the board members should be a certified property valuer.

### Taxation of SRWN

In comparison with the initial draft bill, significant changes were introduced to the rules of taxation.

Pursuant to the amended regulations, income derived by a SRWN from: rental or sale of real properties, or their parts, the sale of shares in qualified subsidiaries and from dividends obtained from qualified subsidiaries will be subject to tax exemption until it is allocated and disbursed for payment of dividend to investors or as remuneration for management, supervisory and control bodies as well as persons representing such companies.

Further, in the case of qualified subsidiaries, tax exemption will apply to income derived by these companies from rental or sale of real properties or their parts to the extent disbursed for payment of dividend to the SRWN or purchase or development of real properties or their parts within the regulatory deadlines.

The aforementioned tax exemptions will apply provided that accounting records are kept in a manner enabling verification of whether the SRWN fulfilled the statutory conditions regarding the sources of income and their allocation.

Moreover, the new draft bill provides that income derived by a SRWN either directly or indirectly from rental of real properties in the part disbursed for the payment of dividends and other distributions from shares in profits to their shareholders will be subject to corporate income tax at a 8.5 percent CIT rate. It should be noted that such income cannot be decreased by depreciation write-offs made from the real properties possessed by SRWNs.

The discussed draft bill introduces also the obligation to pay tax in the case of failure to meet the statutory conditions for tax exemption or in a situation where a SRWN or its qualified subsidiary is put into bankruptcy or liquidation or in case of a loss of the status of a resident in the territory of Poland.

#### **Taxation of investors**

The new draft bill includes also preferential rules regarding taxation of income derived from investments in SRWNs – income from participation in profits of SRWNs (dividends, dividend advance payments) will be subject to tax exemption for investors being either CIT or PIT taxpayers.

According to the new draft bill, the proposed provisions are expected to enter into force as of 1 January 2018.

Please note that the draft bill under consideration was made available for public consultations and assessment process and may be amended in the course of the further legislative process.

Please contact us if you would like to obtain more information on the aforementioned changes or discuss the potential benefits that may arise from it for your company.

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