



September 2018

## Proposed bill amending CIT Act

**On 24 August 2018 the Ministry of Finance published the project of the bill amending the Personal Income Tax Act, the Corporate Income Tax Act, the Tax Ordinance Act and several other regulations (hereinafter: “the Project”).**

The Project assumes simplification and tightening up of the corporate income tax (hereinafter: “CIT”) system and adjustment of the Polish tax law to the latest European Union law (i.e. so-called ATAD and DAC 6 Directives).

### **Simplifying regulations**

#### **Preferential taxation of income generated by intellectual property rights (so-called Innovation Box)**

The Project assumes preferential CIT rate of 5 percent on income received by taxpayers from qualified intellectual property rights that are created, developed or improved by the taxpayers within their research and development activities.

More information about this change is presented in a separate KPMG tax alert.

#### **Introduction of a reduced 9 percent CIT rate**

The reduced 9 percent CIT rate shall apply to taxpayers, whose revenues in a tax year did not exceed in the preceding tax year the PLN equivalent of EUR 1 200 000 (for revenues other than from capital gains).

The preference is aimed at small taxpayers (this status is calculated based on revenues from preceding tax year), whose profitability does not exceed 33 percent.

Preferential tax rate shall not be applicable for the taxpayers created or involved in certain restructuring activities.

#### **Notional interest deduction**

The Project assumes the implementation of possibility to increase tax deductible costs by the amount of deemed interest corresponding to the ratio of reference rate of National Bank of Poland (binding on the last working day in a year preceding the particular tax year) increased by one percentage point and:

- additional equity injection to the company or;
- earnings transferred to supplementary or reserve capital

capped at PLN 250 000. The Project assumes that the new regulations shall come into force from 2020, however they should be applicable also to additional equity injections and retained earnings for 2019.

#### **New solutions for trading packages of receivables**

The Project assumes the introduction of a possibility to recognize a cost base of individual receivable and implementation of new rules concerning packages of receivables where one

packet shall include at least 100 receivables.

Costs of receivable or receivables packet purchase shall be recognized in the amount of revenue received from these receivables (i.e. funds received from receivables settlement or from further sale of such receivables). Tax loss recognition shall be not possible in this kind of transaction.

#### **Introduction of an alternative method of bonds taxation**

According to the Project, interest and discount coupon received from bonds by non-residents shall be exempt from taxation. This regulation shall be applicable to the bonds which are traded on regulated market or on alternative trading system, with maturity longer than one year and issued after 1 January 2019. The issuer shall be obliged to pay tax due based on the sum of interest and discount coupon payments made during the tax year. In respect of bonds issued before 1 January 2019, apart from the standard taxation form there would be an option to transfer tax obligation from the bondholder to the issuer. Alternative method shall be applicable only to particular bond series notified to the tax office. The flat 3 percent tax rate shall apply to the total amount of coupon payments calculated according to the regulations indicated in the Project.

## Cryptocurrencies taxation

The revenue from cryptocurrency trade shall be recognized as capital gains. However, such revenue shall not be combined with other income received within this income basket.

The Project assumes that cryptocurrency exchange (for other cryptocurrency) shall be tax neutral, regardless of the transaction method (stock market, exchange office or individual exchange).

More information about this change is presented in a separate KPMG tax alert.

## Modifying regulations

### Changes regarding costs of passenger cars

The Project assumes that limit for depreciation of passenger car will be increased from EUR 20 000 to PLN 150 000. Similar change will apply to value which is the basis for calculation of insurance premiums.

Leasing instalments for passenger cars will also be limited as indicated above. The proposed regulations for current expenses on passenger cars used for economic activity and for other purposes (not related to economic activity) shall be analogous as under the Polish VAT Act (taxpayers will be entitled to treat 50 percent of maintenance expenses as tax deductible costs or will be obliged to keep a record of mileage).

### Debt-to-equity swap – tax deductible costs

The Project clarifies that taxpayers shall be entitled to treat costs of own receivables contributed in-kind

to a capital company as tax deductible costs.

### Possibility of using a copy of tax residence certificates

The Project assumes possibility to use a copy of tax residence certificate in the case of withholding tax collection from income received by non-residents for selected intangible services. The copies of the tax residence certificates shall be accepted in the following cases – receivables payments to the same entity shall not exceed PLN 10 000 per annum and information resulting from the tax residence certificate copy shall not raise any justified doubts as to the compliance with facts.

### Additional modifying regulations:

- removal of the obligation to publish in the Court and Commercial Gazette (*Monitor Sądowy i Gospodarczy*) information regarding registration and deletion of the tax capital group;
- extension of the tax exemption for closed-end investment fund regarding exemption of interest from loans purchased by such fund from banks, including cooperative banks and SKOK;
- modification of head of tax office jurisdiction in the case of income received in connection with transfer of amounts from other capitals to share capital;
- extension of the tax exemption for revenues received from sale of share in real estate which is a part of agricultural enterprise;

- securities lending settlement (“per balance”) – lender revenue shall be a difference between security repurchase price and a price, by which the security was provided to the borrower;
- tax exemption of particular income from free of charge services received in connection with off-set contracts.

## Sealing regulations

### Introduction of exit taxation in Poland

Subject to exit tax (19 percent) will be:

- transfer of an asset (as “an asset” is also understand enterprise or the organized part of the enterprise) outside Poland, as a result of which Poland shall lose the right to tax income from the sale of such asset, provided that the transferred asset remains the property of the same entity;
- change of tax residence by a taxpayer subject to unlimited tax liability in Poland, as a result of which Poland shall lose the right to tax income from the sale of an asset owned by such taxpayer (in connection with changing the seat or place of management to another country).

The income from unrealized gains shall be the surplus of the market value of the transferred asset (including the situation of change the tax residence), determined as at the date of its transfer, over its tax value defined in the Project).

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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More information about this change is presented in a separate KPMG tax alert.

#### **Changes regarding withholding tax obligations**

The proposed changes shall concern receivables paid in favor of the same taxpayer which total amount exceeds PLN 2 000 000 in a particular year. At the moment when the limit is exceeded, the tax remitter shall be obliged to calculate, collect and pay withholding tax due based on domestic tax rate indicated in CIT Act (i.e. 19 percent for dividends or 20 percent, for royalties and interest, as a rule without the possibility of using the exemption or preferential tax rates resulting from particular provisions or double tax treaties). Subsequently, it shall be possible to submit tax refund application, which could be done not only by taxpayer, but also by his attorney or tax remitter (if the economic burden was incurred by the tax remitter). The application shall be submitted in electronic form (as an attachment to the application form shall be enclosed also appropriate documentation for tax refund). Tax refund deadline proposed in the Project is 6 months.

The Project assumes two simplifications. According to proposed provisions when the limit of PLN 2 000 000 is exceeded it shall be possible for the tax remitter to still apply the preferential WHT rate at the moment of payment:

- in the case of providing to the tax authority appropriate statements concerning fulfillment of formal requirements and keeping carefulness in verification of content-related conditions for particular tax preference by the tax remitter (under penal liability or consequences in the form of additional tax liability);
- in the case of receiving by taxpayer an opinion regarding the right to use an exemption from withholding tax (it concerns only exemptions which are adopted to the CIT Act as a result of the implementation of European Union directives).

It is planned to levy a fee for the application concerning described opinion amounting to PLN 2 000. Interestingly, according to the Project justification, the fee was

proposed as 0,5 percent of the receivables or amount of income (if the payment shall not be made), which shall be paid (or received) during 12 months from the moment of filing the application for the opinion, but no more than PLN 30 000.

#### **Conclusion**

According to the Project, proposed changes shall come into force from 1 January 2019.

It should be noted that the Project will be subject to public consultations and further legislation process and thus the final provisions of the amendment act could differ from the Project in its current wording.

Please contact us if you would like to obtain more information on the aforementioned changes or discuss their impact on your company.

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