

April 2020

New rules for collecting WHT will be postponed again to 31 December 2020

On 23 April 2020 was published a draft decree of the Minister of Finance, which is to amend:

- 1) the decree on excluding or limiting the application of Article 26(2e) of the Corporate Income Tax Act and
- 2) the decree on excluding or limiting the application of Article 41(12) of the Personal Income Tax Act.

According to the draft decree, the entry into force of the new withholding tax (WHT) collection mechanism in CIT, initially planned for 1 January 2019, will be postponed again, to 31 December 2020.

In fact, the entry into force of these provisions has already been postponed to 30 June 2019, 31 December 2019 and, most recently, to 30 June 2020.

Meanwhile, although the regulations on the new withholding tax collection mechanism in PIT have been in force for half a year, the new draft decree provides for their suspension from 1 January 2020 to 31 December 2020.

Goal of the regulations

Essentially, the regulations refer to the new obligations imposed on withholding tax remitters by the Act of 23 October 2018 amending the Personal Income Tax Act

and the Corporate Income Tax Act (Journal of Laws, item 2193), according to which, Polish tax remitters paying out interest, dividends, royalties or payments for certain intangible services to foreign taxpayers are first obliged to collect WHT (at the standard rate of 20 percent or 19 percent) and only once it is collected, foreign taxpayers or the remitters themselves (if they bore the economic burden of tax) may apply for a refund of the collected WHT (under the pay and refund mechanism).

The pay and refund mechanism covers payments exceeding the threshold of PLN 2M (done to the same taxpayer in one year), unless a clearance opinion is issued or a statement signed by the Management Board under penal fiscal liability.

Regulations still in force

Note that the postponement applies only to the mechanism of collection of withholding tax.

In turn, the regulations obliging tax remitters to exercise due diligence when verifying the conditions of applying WHT exemption or lower WHT rate, and to qualify the recipients as their beneficial owners in line with a new broader definition of the term (including the obligation to verify whether they conduct actual business activity), still remain in force.

Reasons behind the postponement

The reason for the postponement is the prolonged state of the COVID-19 pandemic. Given the situation, it is justified to limit the remitters' obligations related to the collection of WH, as well as to ensure proper capacity of the tax administration.

Since it remains impossible to specify when the pandemic will be over and thus to ensure relevant support for business throughout this period, the idea was to postpone the date of entry into force until the end of 2020.

Justifications for the previous decrees postponing the entry into force of the above obligations included information that the Ministry of Finance planned to amend the provisions in this respect. However, the justification for the new draft decree did not mention it. It remains uncertain whether the Ministry's plans have changed, or the information was simply omitted.

Please contact us for further information

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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