

November 2020

Changes in income taxes as from 1 January 2021

On 30 November 2020, the acts amending the Personal Income Tax Act, the Corporate Income Tax Act, the Act on Flat-Rate Income Tax on Certain Revenues Generated by Natural Persons and certain other Acts were published in the Polish Journal of Laws and thus entered into force. The acts, effective as of 1 January 2021, bring a raft of changes to the Polish income tax regulations, including extension of CIT obligations to limited partnerships and certain general partnerships, a requirement to prepare and publish a report on the tax strategy executed in the given tax year imposed on certain taxpayers or the possibility to apply an alternative CIT scheme (a solution dubbed "Estonian CIT").

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

Limited partnerships and certain general partnerships to become CIT payers

As from 1 January 2021:

- 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, before the beginning of a financial year, i.e. 1 January 2021, they submit 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)

- will become CIT payers.

Limited partnerships, however, may decide to apply the new rules from 1 May 2021.

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 or CIT at the partner level.

At the same time, however, the new act 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. In turn, general partners will be entitled to deduct the income tax, calculated based on the income from the participation in the limited partnership's profits, by the amount of tax already paid by the partnership, proportionally encumbering the general partner's profit obtained from the participation in such partnership.

However, 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.

Report on the executed tax strategy

Furthermore, the amendments impose on certain taxpayers a requirement to prepare and publish a report on the tax strategy executed 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.

The report must take into account the nature, type and size of the taxpayer's business activity and include information on:

- 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);
- 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;
- controlled transactions, the value of which exceeds 5 percent of the balance sheet assets;

- the submitted applications for issuing declaratory and binding rulings, binding rate information and binding excise information;
- settlements made in countries that encourage abusive tax practices.

The report should be presented by taxpayers within 12 months from the end of the tax year.

This means that taxpayers having the taxable year coinciding with the calendar year in general will have to present the information on the tax strategy executed in 2020 by the end of 2021.

Estonian CIT

Other changes, applicable as of 1 January 2021, include the implementation of the solution commonly referred to as "Estonian CIT", i.e. flat rate on income in capital companies.

The main assumption of the model is that eligible CIT payers will not have to pay income tax until they decide to distribute the company's earning.

The Estonian CIT scheme may be applied only by companies meeting a number of criteria. In particular:

- the company has to submit a notification on the choice of flat-rate taxation to the competent head of the tax office by the end of the first month of the first tax year in which the solution is to become applicable;
- the total operating income achieved in the previous tax year or the value of average operating income did not exceed PLN 100 million;
- their shareholders are only natural persons;
- such companies may not:
 - hold shares in other companies' capital;

- hold participation units in an investment fund or a mutual fund;
- hold general rights and obligations in a company that is not a legal person or other property rights related to the right to receive a benefit as an originator/founder or beneficiary of a foundation, trust or other entity; or
- maintain fiduciary relationships.
- revenue from passive activities (such as interest, sureties and sale or implementation of financial instruments) will need to constitute less than half of total revenues;
- the company does not prepare financial statements in accordance with IAS;
- additionally, the company willing to use the solution will have to:
 - maintain average employment of at least three employees who are not its shareholders; or
 - incur monthly expenses in an amount equal to at least three times the average monthly salary in the business sector, on the account of payment of salaries to at least three natural persons employed under a contract other than an employment contract, who are not shareholders.

Moreover, the companies willing to apply the solution will have to increase their direct investment expenditures by 15 percent (but no less than PLN 20k) over two consecutive years or 33 percent (but no less than PLN 50k) over four consecutive years, unless, in two consecutive tax years covered by flat-rate taxation, the company incurred expenses related to remuneration of employed natural

persons, except for shareholders, in an amount higher by 20 percent (not less than PLN 30,000) vs the amount of such expenses incurred in the tax year preceding the two-year flat-rate taxation period.

These conditions will be relaxed for companies starting their business. For example, the conditions for using the Estonian CIT solution will be deemed satisfied if the company, in the first year of its operations, achieves an average revenue of PLN 100 million and meets the passive income requirement. Moreover, the requirement of keeping at least three natural persons employed will be waived in the first year of business and two consecutive tax years.

The Estonian CIT scheme may be applied for four years (with an option of extension).

Other changes

Other changes brought by the new acts include:

- extension of 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);
- shifting the obligation to settle tax on the sale of shares in real estate companies to the real estate company;
- 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;
- 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;

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.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

© 2020 KPMG Tax M.Michna sp.k., a Polish limited partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

- 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;
 - obligation of real estate companies and taxpayers holding directly or indirectly 5 percent of shares in such a company to provide information on the share structure of such company to the Head of the National Revenue Administration by the end of the third month after the end of the tax year of a real estate company.
- The potential impact of the amendments on your business should be taken into consideration and thoroughly assessed.
- If you would like to learn more about the issues discussed, please do not hesitate to contact us at mampytanie@kpmg.pl

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.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

© 2020 KPMG Tax M. Michna sp.k., a Polish limited partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

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



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.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

© 2020 KPMG Tax M.Michna sp.k., a Polish limited partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

kpmg.pl