CITpoint Magazine

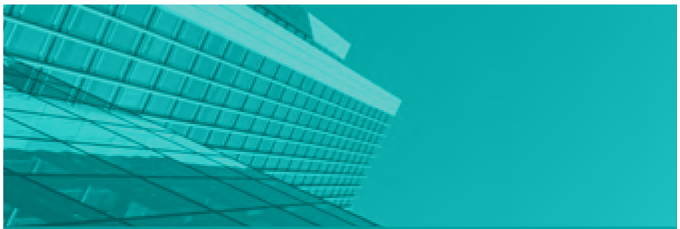
SPECIAL ISSUE

Changes in CIT in 2021

December 2020

KPMG.pl

In this Issue



Do changes in taxation of limited partnerships foreshadow their likely collapse? 5

Estonian CIT: the Polish way 8

Real estate companies - new classification and new obligations 14

New reporting obligation: information on the executed tax strategy 17

Limited loss 19

Further amendments to WHT 22

Introduction

It is our pleasure to bring to you this latest, special issue of CIT Point Magazine, dedicated to the key developments in CIT in 2021.

The amendments extending CIT obligations to limited partnerships (Journal of Laws, item 2123) and introducing a new taxation scheme dubbed ‚Estonian CIT' (Journal of Laws, item 2122) brought unprecedented controversy and remain at the heart of a heated debate between taxpayers.

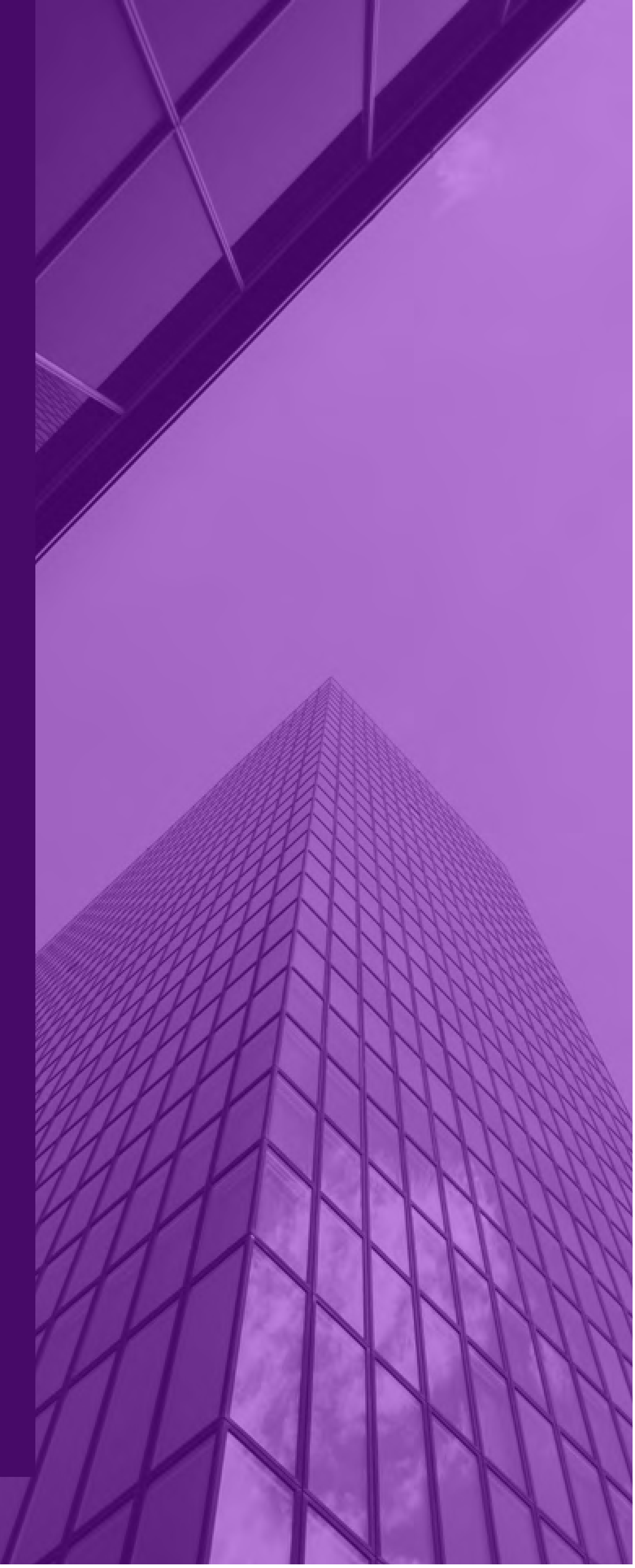
The provisions introducing CIT on limited partnerships came into effect on 1 January 2021, thus marking the most profound systemic change of the last years, especially given that it pertains to the second most common type of business structure in Poland. Thus, the important advantage of limited partnerships, consisting in single-level taxation, has been irretrievably lost. Under the new rules, the revenue at the partnership's level and the earning distributed among the partners are subject to separate taxation. As a consequence, possible implications of keeping this form of business activity and the alternatives thereto should be further analysed.

Another significant amendment relates to obligations vested in real estate companies Under the new rules, real estate companies are required to provide information on their shareholding structure and must settle the tax on alienation of their shares. The new obligations are likely to become a source of many doubts and controversies.

The same goes for new regulations on the limited possibility of deducting loss in a situation where the taxpayer took over or purchased an enterprise or an organised part of an enterprise. Unfortunately, lack of interim provisions in this regard means that the amended regulations will also cover to losses incurred before their entry into force.

The Estonian CIT scheme, announced as the key tax facilitation for 2021, seems to be still in its pilot phase. At present, it may be applied only by limited liability companies, provided that their shareholders are only natural persons and they do not hold shares in other entities. They must also meet a set of criteria, including the obligation of making fixed asset investments and maintaining a sufficient level of employment. In fact, the coming months are to show, whether the Estonian CIT scheme wins over the taxpayers. Undoubtedly, the key advantage of the solution is that eligible taxpayers will not have to pay income tax (19%) until they decide to distribute the company's earning (along with other circumstances provided for by the Act).

Another significant amendment brings the obligation to publish a report on the executed tax strategy, imposed on the largest taxpayers, whose revenue exceeded EUR



50 million in the given tax year, as well as tax capital groups. Importantly, the report for 2020 must be published already in 2021. This means that the works on the strategy should be launched early enough to prepare a formal document describing the strategy and applied procedures, based on which the reporting obligation can be fulfilled.

As for the new WHT collection procedure, it seems that the beginning of 2021 will not bring any developments in this regard, but rather a further postponement of solutions that were to be implemented already two years ago. Nevertheless, still in 2021, the final form of the mechanism is likely to be presented, along with changes in the jurisdiction of tax authorities. Given the above, it is worth planning in advance for the submission of a declaration allowing for the continued application of exemptions or obtaining a binding opinion on the application of the exemption.

We wish you a pleasant reading and encourage you to contact us with any questions or comments you may have. ■

Anna Sińczuk

Partner, Corporate Tax Advisory, KPMG in Poland

Przemysław Szywacz

Partner, Corporate Tax Advisory, KPMG in Poland

Wojciech Majkowski

Director, Corporate Tax Advisory, KPMG in Poland

Do changes in taxation of limited partnerships foreshadow their likely collapse?

One of the most discussed and the most significant amendments to the Polish tax legislation, applicable as of 2021, is the extension of CIT obligations to limited partnerships and certain general partnerships.

The idea dates back to 2013 and finds its origin in works on CIT amendments proposed at that time. Yet, the initial draft being the fruit thereof provided for extending CIT obligations solely to limited joint-stock partnerships, starting from 2014. Eventually, the idea for introduction of limited partnership as CIT payers was abandoned, since, according to the authority, „compared to a limited joint-stock partnership, a limited partnership was a much less frequently chosen vehicle for tax optimization, and a type of business structure frequently selected by small and micro-companies. As a result, defining a scheme under which a limited partnership could be used as a vehicle for tax optimization turned out to be too complex. Thus, considering the market situation in 2013, it was decided to stick to the then-binding regulations on the capacities of limited partnerships in terms of corporate income tax, while granting the CIT payer status to limited joint-stock partnerships".

It should be noted, however, that the recently passed amendment remains to some extent consistent with the latest government measures aimed at increasing the interest in conducting business activity through capital companies. This is done by means of a ‚stick' (extending CIT to limited and general partnerships) and a ‚carrot' (e.g. a 9% tax up to a certain turnover cap and the Estonian CIT scheme). In fact, the legislator indicates that the reason behind the proposed changes is the need to combat tax abuses associated with conducting business activity through partnerships.

It is worth emphasizing that in 2013 the number of registered limited partnerships was slightly over 12,000, while at the end of 2019, it spiked to over 40,000. This spectacular increase is due to a number of overlapping circumstances, yet, undoubtedly, full CIT transparency of limited partnerships has been one of the main reasons thereof.

Up to now, income earned by limited partnerships was taxed solely at the level of their partners, who demonstrated revenues and costs on an ongoing basis, in proportion to the share held in the partnership. Importantly, earnings distributed by the partnership were not subject to repeated taxation. Therefore, taxation took place only once, as opposed to companies, where distribution of the earning was subject to CIT at the level of the company and then at the level of partners.

Limited partnerships are formed by two types of partners: general partners, who represent the company and have unlimited liability, and limited partners who are liable for the partnership's obligations only up to the amount of the commandite sum. In practice, it was common to establish structures in which limited liability companies acted as general partners - usually holding a minimum nominal capital and a small part of the rights and obligations, the vast majority of which belonged to limited partners being the actual partners thereof. Such manner of organizing business activity brought a double benefit: first of all, it provided for a single tax imposed solely on partners, secondly, it limited their obligations only up to the amount of the contribution made. Such structures seem now to be targeted by the legislator. Unfortunately, this translates into eradication of all possible tax benefits related to limited partnerships per se.

Pursuant to the amendment, the income paid to the general partner will be taxed with a 19% flat-rate income tax. The general partner can only deduct it by a portion of CIT paid by the partnership (according to their share in the partnership's profit). Thus, for general partners, taxation will effectively remain at the same level.

This does not apply, however, to limited partners who, as a rule, will not be authorized to use the tax deduction scheme, which in practice will translate into double taxation - at the partnership and at the partner level. In this respect, the regulations provide for a certain exemption, yet, due to its significant restrictions, it is not likely to have any far-reaching positive effects for limited partners. This is because the exemption will encompass 50% of the revenue earned by a limited partner through shares in a limited partnership's earnings, however, no more than PLN 60k annually. The limits are set on all share in earnings of each partnership, in which the taxpayer acts as a limited partner. At the same time, the exemption does not apply to a limited partner who, inter alia, holds directly or indirectly at least 5% of shares in a company with legal personality that is a general partner in this limited partnership, is a member of the management board thereof or an associated entity.

In a situation where limited partners are legal persons, subjection of the distributed gains to the exemption which up to now was applied to dividends may be considered. For example, if a company holds at least 10% shares in a limited liability company which pays out dividends and keeps it for at least 2 years, at the same time being the beneficial owner of the payment made, it may be eligible for a full tax exemption on dividend. As a result of changes in the statutory definitions and the purposive interpretation of the provisions of the amending Act, similar exemption could now be applied to the profits of a limited partnership. In fact, taking steps in this direction is worth considering.

Imposition of CIT obligations means that limited partnerships will be required to keep the adopted tax valuation of assets, in particular with regard to the initial value of fixed and intangible assets, the adopted depreciation method, rates and period, as well as the amount depreciation write-offs made so far. The events affecting the amount of the tax liability that occurred before the date on which the partnership became a CIT payer must also be taken into account.

When discussing the introduced amendments one should also keep in mind the interim provisions in force. In principle, the new regulations entered into force on 1 January 2021, yet, the new rules of taxation do not apply to the income earned by partners to a limited partnership before this date. Moreover, the interim provisions also relate to the possibility of deducting losses previously incurred by partners and the rules for calculating the tax result for operations on equity participation purchased or subscribed for before the effective date of the regulations.

At the same time, a limited partnership may decide to apply the amended provisions starting from 1 May 2021, i.e. the effective date of extending CIT obligations to limited partnerships. New regulations bring implications of accounting nature, since a limited partnership becoming a CIT payer is required to close its accounts on the day before gaining the CIT payer status. An exception is the situation when the last day of the financial year falls in the period from 31 December 2020 to 31 March 2021. If such is the case, the limited partnership is not required to close its accounts and may continue the financial year until 30 April 2021. In this way, the legislator wants to support taxpayers, allowing them to avoid the possible double closing of books in a short time - once at the end of a specific financial year, and the second time in connection with obtaining the CIT payer status.

In light of the above, one may state that extending CIT obligations to limited partnerships has far more reaching implications, going beyond taxation of the current income. In fact, the new regulations are to bring new tax implications for transactions between a limited partnership and its partner, e.g. in terms of in-kind contributions, liquidation or withdrawal. This means that taxpayers should carefully analyse transactions within a limited partnership and asset-related operations that they are willing to perform in the nearest future.

It should be also noted that the new regulations provide for extending CIT obligations also to general partnerships, in which general partners are not only natural persons, unless they submit relevant information on taxpayers who are entitled to a share in the partnership's profits or an update of such information within 14 days from the date the change was made. Importantly, unlike limited partnerships, general partnerships have not been granted a possibility of postponing the date of becoming CIT payers until 1 May 2021.

Regardless of the reasons behind the amendments emphasizing their tax system-sealing role, provided by the authority, one should keep in mind that limited and general partnerships are legal forms frequently used by family businesses and entities from the consulting industry, which do not seem to have tax optimization for their primary purpose. Additional taxation may force these entities to undertake specific reorganization measures (e.g. transformation into a general partnership or changing the roles of partners), and therefore fail to contribute to the realization of the income assumed by the State Treasury. A similar situation was witnessed upon imposition of CIT on joint-stock partnerships, reflected in the fact that in 2013 there were 5.7 thousand such entities registered, compared to 3.7 thousand at the end of 2019, (with 28,000 new limited partnerships established in the same period). Therefore, it should be expected that, starting from 2021 limited partnerships are to become far less popular, with many entities of this type winding up.

Mateusz Rychlik

Assistant Manager, Corporate Tax Advisory, KPMG in Poland

Paweł Szala

Consultant, Corporate Tax Advisory, KPMG in Poland

Estonian CIT: the Polish way

The end of November 2020 brought the completion of parliamentary works on the new corporate income tax mechanism, so-called "Estonian CIT". The subsequent amendments were introduced by way of Act of 28 November 2020 on amendments to the Corporate Income Tax Act and Certain Other Acts (Journal of Laws of 2020, item 2122), published on 30 November 2020, where the new scheme was referred to as ‚the lump sum tax on the income of companies'.

KEY ASSUMPTIONS

The income tax system in Estonia is known for its rather simple, and thus taxpayer-friendly, structure. Its main assumption is that the tax is not payable on current income earned in the course of business but becomes due only when dividends are paid out to shareholders. This translates into facilitated business operations and provides for improved development fuelled by the generated profit. It should be noted that said taxation manner is the default framework for tax settlements in Estonia.

In principle, one of the goals behind introduction of this solution in Poland was to use the postponed taxation as an incentive for companies to finance their operations with the profits. Other benefits of the solution indicated by the Ministry of Finance include determining the tax result based on accounting data, limited reporting obligations and absence of monthly advance payments. The narrative placed the lump sum taxation in the context of levelling the playing field for SMEs. Yet, it is hard to escape the impression that the Polish version of the "Estonian tax" is branded with over-complexity, typical for Polish tax legislation.

In fact, the new model of taxation relies on determining income based solely on accounting data, pursuant to the Polish accounting provisions. Companies that opt for the lump sum taxation will benefit from special taxation rules (e.g. higher tax rates - 15% and 25% - which are then balanced through deductions - different reporting obligations, exemption from the minimum tax on real estate, and waived obligation to report domestic tax arrangements, under MDR provisions (Chapter 11a of the Tax Code). On the other hand, lump-sum taxpayers cannot apply the IP-Box scheme, i.e. a preferential 5% rate applied to the income derived from qualified intellectual property rights.

Application of lump sum taxation must continue for a period of at least 4 years and is subject to meeting a number of subjective (relating both to the company itself and its shareholders who must be natural persons) and objective requirements discussed below.

WHO CAN USE IT?

The major difference between the Polish lump sum taxation and the original Estonian solution is that it remains a scheme alternative to other applicable taxation methods. In fact, this way of taxation may be applied solely by companies within the meaning of the Polish Comercial Companies Code, i.e. solely limited liability companies and joint-stock companies. This means, that the solution remains unavailable for limited joint-stock partnerships and limited partnership, the latter becoming CIT payers as of 2021. The lump sum tax on company income may be used by both existing and new entities.

The legal form criterion comes with other requirements pertaining to:

1. the company's ownership structure,
2. amount and types of revenues,
3. capital expenditures and/or remuneration value,
4. employment level,
5. types of business activity conducted, insolvency or bankruptcy status,
6. the way in which the taxpayer was established,
7. preparation of financial statements in line with the Polish accounting regulations, excluding IAS,
8. notification of applying lump sum taxation.

Ad 1) Ownership structure

In order to be authorized for applying lump sum taxation on income, the company's shareholders must consist only of natural persons who do not hold property rights related to the right to receive benefits as founders (originators) or beneficiaries of a foundation, trust or other fiduciary entity or relationship. This means, among others, that the solution can become inaccessible to companies with shareholders being founders or beneficiaries of entities such as family foundations.

Moreover, it precludes the possibility of using the scheme to companies participating in the share capital of another company, having equity participation in a partnership, participation titles in an investment fund or collective investment institution, or finally - similarly to partners - holding rights related to the right to receive benefits as founders (originators) or beneficiaries of a foundation, trust or other fiduciary entity or relationship.

Thus, the model user of the solution seems to be a company with natural persons as shareholders, free of any participation in other entities. Furthermore, both the taxpayer and partners (shareholders) thereto may not use any fiduciary structures.

Ad 2) Amount and kind of revenues

The Estonian CIT solution has been designed for companies with gross revenues not exceeding PLN 100,000,000. It should be borne in mind that the indicated values should include the VAT due.

Under the applicable revenue threshold, the scheme may be used both by companies paying CIT at the rate of 19% and small taxpayers using the 9% CIT rate.

It must be kept in mind that the revenue condition also applies to its type. In other words, no more than a half of qualified revenues can constitute of financial revenues i.e. revenues from receivables, interest and loans, sureties, guarantees, financial instruments, as well as revenues from benefits of intellectual property rights and revenues from transactions with related entities (within the meaning of the provisions on transfer pricing), when such transactions do not lead to the generation of significant added value in economic terms.

Ad 3) Capital expenditures

Application of lump sum taxation is also conditional on making investments, as defined by the provision of Article 28f of the CIT Act, in its wording applicable as of 1 January 2021. Capital expenditure should

be understood as expenses actually incurred on manufacturing or purchase of new fixed assets. In the case of a significant investment reported to the tax authorities, capital expenditure may also include the repayment of the initial value of fixed assets used under a financial lease agreement.

Moreover, under the applicable provisions, the minimal investment rate is calculated in the following manner:

1. 15% - no less than PLN 20,000 - in the period of 2 subsequent tax years of lump sum taxation, or 33% - no less than PLN 50,000 - during 4 subsequent tax years,

in relation to the initial value of fixed assets calculated on the last day of the tax year preceding the period of lump sum taxation, for fixed assets included in groups 3-8 of KŚT [Fixed Asset Classification] (thus excluding real estate and engineering structures classified in groups 0-2). Passenger cars, means of air transport, watercraft and other assets which, in the legislator's opinion, are to be used mainly for personal use by partners or shareholders or their family members, were excluded from the catalogue of qualified fixed assets, the initial value of which is to determine the value of the investment.

Taxpayers who do not need to acquire fixed assets, are not subject to the condition of incurring capital expenditure, provided that they increase, in 2 or 4 subsequent years, respectively, the value of remuneration or the number of employees, excluding partners and shareholders, compared to the period in which they were subject to taxation on general principles.

What is more, the new regulations provide for preferential rules in this regard for taxpayers starting business activity and companies classified as small taxpayers.

Ad 4) Employment

Entities eligible for applying the solution are required to maintain an average employment of at least three employees who are not its shareholders, based on employment contracts, for a period of at least 300 days in a calendar year, or 82% of days of a fiscal year which does not overlap with a calendar year. Alternatively, such companies may incur monthly employment expenses under civil law contracts entered into with at least three persons who are not its shareholders, for whom the companies will act as PIT and social security contribution remitters, while the sum of expenditures on remuneration may not be less than three times average monthly remuneration in the business sector.

Also in this regard, the rules set out by the provisions are more relaxed for companies starting business activity and small taxpayers.

Ad 5) Types of business activity conducted, along with possible insolvency or bankruptcy

The new CIT scheme cannot be applied by financial undertakings within the meaning of the provisions on thin capitalization, loan institutions, and taxpayers who obtain exempt income from conducting business activities under special economic zones.

Furthermore, lump sum taxation is also unavailable to companies in liquidation and bankruptcy. It also means that for companies using lump sum taxation, initiation of liquidation or bankruptcy proceedings means return to taxation on general rules.

Ad 6) The way in which the taxpayer was established

The application of lump sum taxation is limited for entities established:

a) through merger or division or by entities that made contribution-in-kind of assets acquired from shares as a result of liquidation of other taxpayers,

b) by entities which in the first year of operation (establishment) of the taxpayer made contribution-in-kind of an enterprise or an organized part of an enterprise with the value exceeding the equivalent of EUR 10,000.

The taxpayers established in the ways indicated above cannot use the lump sum taxation for 24 months from the date of establishment.

This is also the case of companies established by way of partial division or contributed to other entities by:

a) an enterprise or an organized part of an enterprise with a value exceeding the equivalent of EUR 10,000.

b) assets acquired from shares as a result of liquidation of other taxpayers,

in the tax year of making the contribution, making the division, or in the following year, but not less than 24 months from the date of the division or the contribution.

Ad 7) Accounting principles applied

The method of determining the taxable base of income for the purposes of the lump sum taxation is the net profit determined for accounting purposes. Under the amended provisions of the CIT Act, the use of International Accounting Standards (IAS) in financial reporting by listed companies or those applying for admission to trading or by entities that are members of capital groups in which the parent company is seated in the European Economic Area, is a negative premise for applying lump sum taxation. This means that the tax base to be covered by lump sum taxation must be established pursuant to the Polish accounting provisions.

Ad 8) Notification of applying lump sum taxation

Application of the lump sum taxation scheme is subject to a prior notification made to tax authorities. The company has to submit a notification on the choice of lump sum taxation to the head of the competent tax office by the end of the first month of the first tax year in which the solution is to become applicable, using the template provided for by the decree.

THE SUBJECT AND BASIS OF TAXATION ACCORDING TO THE ACCOUNTS

The general CIT regime in force assumes that, based on the properly kept accounts, taxpayers make necessary adjustments and deductions of revenues and tax-deductible costs as provided in the CIT Act. The actions performed result in the determination of a tax base (positive difference between revenues and costs), which may significantly differ from the financial result. The discrepancies between the accounting principles and the tax approach often raise many practical doubts and have been broadly interpreted in the light of the case-law.

The subject of lump-sum taxation will be income corresponding to the net profit determined on the basis of accounting regulations, divided between the partners, which will be distributed (through dividends), and has been earned during the lump sum taxation period (referred to as „income from distributed profit"), or net profit used to cover losses incurred before the lump sum taxation period (referred to as „income from profit intended to cover losses"). This also applies to advance dividends.

The following items will also be deemed income and taxed accordingly:

1. *income from unrealized gain*, i.e. gain other than the income distributed among shareholders or entities associated with them or with the taxpayer (except for certain transactions),
2. value of non-business expenditure (*income from non-business expenditure*),
3. in the case of mergers, divisions, transformations or contributions made in the form of an enterprise or its organized part - surplus of the market value of the acquired assets over their tax value (*income from changes in the value of assets*),

4. in the event of termination of the lump sum taxation period - undistributed net profit for the period in which the taxpayer used the lump sum taxation of income of companies (*net profit income*),
5. income from undisclosed business operations, constituting the value of revenues and costs that, contrary to the obligation, have not been accrued and included in the calculation of net profit (loss).

Furthermore, the provisions provide for inclusion in the tax base of income earned abroad and tax on such income payable abroad, depending on the impact of these components on the net financial result achieved in Poland.

Settlement of the lump sum tax on company income

The tax rates in the Estonian model are set at:

1. 15% - for small taxpayers and taxpayers whose average annual revenue does not exceed the maximum revenue threshold for small taxpayers (currently EUR 2,000,000),
2. 25% - for the remaining companies that will qualify for and decide to apply the lump sum taxation method.

In the case of income from net profit, the rates may be reduced by five percentage points, in situations where the levels of capital expenditure provided for under relevant regulations are maintained.

Nevertheless, in the event of exceeding the revenue threshold, the regulations require from the taxpayer subject to lump sum taxation to settle the surcharge tax individually in the next tax year. In order to settle the surcharge tax, it will be necessary to calculate the surcharge tax base according to the formula specified in Article 28q(2) of the amended CIT Act. The surcharge tax on the base assessed in this manner will amount to 5%.

Additionally, new regulations provide for separate tax payment deadlines for each type of income.

Undoubtedly, one of the benefits of the solution consists in the possibility of settling the lump sum tax on net profit income and the possible surcharge in the period of up to 3 years, with the only additional requirement consisting in notifying the tax authorities about the choice of such a solution, the amounts due and payment dates.

Reporting and information obligations

Lack of current taxation does not come hand in hand with lack of reporting obligations. Just as in the case of CIT taxation under general rules, annual returns must be submitted by the end of the third month following the end of the tax year.

Additionally, by the end of the first month of each tax year, shareholders will be required to notify companies subject to lump sum taxation of their capital links, under fiscal penal liability. Entities with which the taxpayer (company) does not enter in any - even indirect - transactions, will be excluded from the scope of the notification obligation.

The above-discussed information obligation will also cover the requirement to inform the taxpayers on all changes in links. The taxpayer must be provided with this information by shareholders within a relatively short delay of 14 days. It should be also borne in mind that failure to comply with the information requirement will result in the company's obligation to present the matter before the tax authorities competent for the company and the partner or shareholder.

Preparatory activities

Taxpayers who opt for the Estonian CIT solution should perform a number of preparatory activities specified in Article 7aa of the CIT Act and be aware of special regulations pertaining to deduction of losses (and losing the eligibility to deduct them), if they occurred before the tax year in which application of the new CIT scheme begins.

Most of the preparatory activities consist in including in the tax result for the year preceding the use of the solution of tax revenues and costs (other than those excluded from tax revenues and tax deductible costs) which, under the accounting regulations, were previously included in the taxpayer's net financial result, but were not included in the CIT tax base (under general rules of taxation).

A solution which stirs a lot of controversy is the requirement to determine the income on transformation imposed on taxpayers who in the first year following the transformation decide to use the lump sum taxation. The problem will mainly concern those of the transformed taxpayers for which the market value of the assets will be significantly higher than the tax value, because the difference between these values (i.e. the excess of market value over tax value) will constitute the income from transformation. Overlapping of the provisions on Estonian CIT and the provisions extending CIT obligations to limited partnerships leads to the conclusion that the legislator's goal was rather to discourage the partners to the current limited partnerships from subjecting them to lump sum taxation after the transformation.

In fact, the amended provisions stipulate that losses incurred before the period of lump-sum taxation may be deducted from income retroactively in two tax years preceding the use of the scheme, provided that the period of lump sum taxation lasts at least 4 tax years. Importantly, beginning of lump sum taxation translates into the taxpayer's divestment of the right to further deduct their losses. This means that taxpayers opting for application of the new CIT scheme will have two tax years (before applying the scheme) to use up their losses from previous tax years, provided that they have demonstrated taxable income for this period. The outstanding amount of loss will not be subject to deduction. Moreover, in a situation where the taxpayer makes a retroactive settlement of losses from previous

years before being covered with lump-sum taxation, and the lump sum taxation period is shorter than 4 full tax years, the taxpayer will be charged with the obligation to correct the deduction of losses and thus pay the tax arrears increased by interest.

Summary

The principles of subjecting company income to lump sum taxation were presented herein in a rather general way. One may get an impression that the Polish approach to the Estonian CIT scheme is rather complex, even when compared to the already existing general rules of taxation. Undoubtedly, reducing the differences between the accounting and tax approach to economic events, deferring taxation until the earning is distributed, general support of investments with tax incentives and reduction of reporting obligations is a step in the right direction.

At the same time, the Ministry of Finance's approach to the new solution seems rather conservative or even focused on discouraging taxpayers from using it (as if the fear of possible abuses prevailed over the intention to support small and medium-sized enterprises). This finds its embodiment both the strict limitation of the group of entities entitled to use the solution, as a result of a number of special conditions (including the exclusion of the new class of CIT taxpayers, i.e. limited partnerships, frequently used by natural persons acting as partners), determining the income from transformation, limiting the deduction of tax losses from previous years, as well as limiting investments to fixed assets (thus excluding intangible assets), or finally the lack of specific incentives regarding intellectual property, despite the exclusion of the right to apply the IP-Box relief.

Thus, in the light of the interim provision providing for reduction of the lump sum taxation period in the years 2021-2024, the conclusion may be that the current form of ‚Estonian CIT' is final and after the first couple of years of operation, depending on its reception by taxpayers, it may become subject of further amendments.

Despite immaturity flaws of the lump sum taxation scheme (and whether they will persist or not), the solution surely deserves taxpayers' attention, especially that it may prove more beneficial and less burdensome for SMEs investing in their development than taxation on general principles. Because of the complex preparation it requires, prior to selecting this method, companies and shareholders should perform thorough analyses to determine whether the new form of taxation will fit into the development strategy over a period of at least 4 years and whether it will ultimately turn out to be more beneficial than CIT taxation on general terms providing such incentives as R&D relief, IP-Box, or exemption on income earned on business activities in special economic zones. ■

Dariusz Wójtowicz

Manager Corporate Tax Advisory, KPMG in Poland

Real estate companies - new classification and new obligations

The past couple of months brought a raft of new tax responsibilities imposed on entities operating in the real estate industry. These include, inter alia, increasing the tax burden on immovable property (including the minimum tax on commercial real estate) and alienation of shares in companies holding real estate in the territory of Poland (e.g. through introduction of real estate clauses into double tax treaties in force).

New tax responsibilities are followed by a number of amendments to the CIT Act, vesting additional tax duties for real estate companies, applicable as of 2021. The goal behind introducing these regulations seems to be debatable, while their content may raise significant interpretation doubts. As usual, the Ministry of Finance explains it with the need to tighten up the Polish tax system.

DEFINITION OF REAL ESTATE COMPANY

The Ministry of Finance decided to implement the specific definition of real estate company. Up to now, such notion was absent from the CIT Act, although a similar concept could be found in the catalogue of income sources located in Poland.

Under the new definition, a real estate company means an entity other than natural person, obliged to prepare a balance sheet in line with provisions on accounting, in which:

a) <u>for entities commencing their business activity</u> - as at the first day of the tax year, at least 50% of the market value of assets (directly or indirectly) consisted of real estate located in Poland or rights thereto, with the value exceeding PLN 10m;

or in the case of other entities - as at the last day of the year preceding the tax year, at least 50% of the book value of assets (directly or indirectly) was real estate located in Poland or rights thereto, with the book value exceeding PLN 10m or an equivalent amount determined according to the relevant exchange rate, and in the year preceding the tax year, taxable revenues from: rental, subrental, lease, sublease and other similar contracts, and from the transfer of ownership to real estate (or rights thereto), and income from shares in other real estate companies, constituted at least 60% of total taxable revenues or revenues included in the net financial income.

Thus, the newly introduced definition clearly indicates that the status of a real estate company is granted based on the asset structure and not the legal form of conducting business activity. This means, that the status of a real estate company can be equally granted to a partnership, provided that the value of its immovable property exceeds the threshold set by the definition.

The question remains of how ‚rights to real estate' should be interpreted. It seems that the legislator's intention was not to extend the definition to entities that lease or rent real estate, since the ‚right to real estate' should in fact pertain to obligations and not to property rights (including limited property rights). In practice, this could raise numerous doubts and become the source of disputes with tax authorities.

In practice, the new definition will also serve as a means to determine whether the provisions of real estate clauses, introduced to the majority of double tax treaties, should apply in situations of alienation of shares, transfer of rights and obligations, participation units or rights of similar kind in a real estate company (as defined under the amended CIT Act). It should be kept in mind the scope of the real estate clause provided by the CIT Act and double tax treaties differs from the one encompassed by the definition of real estate company, thus creating two partially overlapping sets of entities. In principle, every real estate company must meet the requirements of the real estate clause, yet it does not mean that every company that meets the conditions of the real estate clause will be automatically classified as such. For example, a company which at the end of the last tax year did not own real estate, but will purchase it during the present tax year and its shares will be alienated in the same year, will not be a real estate company, but may meet the criteria of the real estate clause, which means that the sale of its shares will be taxed in Poland on general rules.

Additionally, entities qualified as real estate companies will have to comply with a number of additional obligations presented below.

ALIENATION OF SHARES IN A REAL ESTATE COMPANY AND SHIFTING OBLIGATIONS OF TAX REMITTERS

Another amendment relates to shifting obligations related to remitting income tax on capital gains from alienation of shares, transfer of rights and obligations, participation units or rights of similar kind in a real estate company from the seller (taxpayer) to the real estate company itself, provided that the seller has a limited tax liability in Poland (i.e. is not a Polish tax resident) and alienation is made in relation to shares giving at least 5% voting rights in a real estate company or all rights and obligations giving at least a 5% share in the profit of a company with no legal personality or at least 5% of the total number of participation units in a real estate company or rights of similar kind.

In such a situation, the real estate company, being a tax remitter, will be required to calculate the tax in the amount of 19% and to pay it to the account of the competent tax office by the 20th day of the month following the month in which the transaction took place.

Thus, in order to fulfil the duties presented above, the real estate company must know details of the transaction, including the costs and income on the seller's side (to assess properly taxable income). In the absence

of information on the exact amount resulting from the transaction, the real estate company will be obliged to settle the 19% income tax based on the market value of the alienated shares, transferred rights and obligations or other rights of similar kind.

It should be stressed that the process of determining the tax remitting duties may give rise to a number of practical problems, especially for entities making continuous investments in real estate companies. In their case, calculating the 5% share may prove difficult, especially if the transactions add up over the subsequent 12 months. A similar issue may be faced by companies enjoying the real estate company status, listed on regulated markets. Lack of knowledge about entities trading in such shares may prevent the real estate company from properly performing its tax remitting obligations. It seems that the legislator did not anticipate such situations, given that it did not provide real estate companies with the appropriate tools to collect information about their shares subject to trade.

Moreover, although the new regulations impose on the sellers the duty of providing the real estate company with sufficient funds to cover the income tax on the transaction, it may happen that they fail to perform it. If such is the case, the real estate company will have to cover the tax due from its own funds and then raise a claim against the seller. Therefore, when planning acquisition of shares in real estate companies, one should pay particular attention to the correct performance of disclosure obligations by the seller and to securing funds for payment of the tax due.

FAILURE TO APPOINT A TAX REPRESENTATIVE PUNISHABLE BY A FINE OF UP TO PLN 1 MILLION

Furthermore, real estate companies having no seat or place of management on the territory of Poland (e.g. foreign entities holding real estate in Poland) will be required to appoint a tax representative. However, this obligation will not be imposed on real estate companies subject to income tax on their worldwide income in an EU or an EEA member state, regardless of the place it is earned.

The main role of the tax representative will be to perform remitting obligations for and on behalf of the estate company it represents and to be jointly and severally liable with the real estate companies for tax obligations arising from selling shares in this real estate company.

A tax representative may be a natural person, a legal person or an organizational unit without legal personality that meets a number of conditions specified in the new regulations of the CIT Act (e.g. it has its registered office, management board or place of residence in Poland, has no tax arrears exceeding the threshold for tax liabilities payable in respect of each tax, has not been convicted for a tax offense and is also authorized to provide professional tax advisory services or bookkeeping services).

It must be kept in mind that a tax representative should be appointed by way of a written agreement. Interestingly enough, the regulations do not provide for a deadline in which the tax representative must be appointed. Yet, failure to do so may result in an administrative fine of up to PLN 1 million.

NEW DISCLOSURE OBLIGATIONS

Moreover, the regulations provide for the imposition of new disclosure obligations on real estate companies and on taxpayers holding, directly or indirectly, at least 5% of the voting rights in a real estate company or at least 5% of the total number of participation units or rights of a similar nature thereto.

Consequently, real estate companies will have to disclose information on entities owning, directly or indirectly, shares, participation units or rights of a similar nature in the said real estate company, along with the number of such participation rights held by each of them, while partners of real estate companies will be obliged to disclose information on the number of shares, participation units or similar rights held, directly or indirectly, in this real estate company.

The above-specified information, valid as at the last day of the tax year of the real estate company, must be submitted electronically to the Head of the National Revenue Administration within 3 months from the end of the tax year.

In practice, this may entail numerous interpretation doubts as to the determination of which entities operating within capital groups or belonging to investment funds will be required to provide such data. Importantly, non-disclosure may result in penal fiscal liability of individuals obliged to satisfy the disclosure duty. ■

Jarosław Nożewski

Senior Tax Manager, Corporate Tax Advisory, KPMG in Poland

New reporting obligation: information on the executed tax strategy

One of the key amendments to CIT regulations brought by 2021 is introduction of a new reporting obligation, under which CIT payers must prepare and publish a report on the tax strategy executed in the given tax year. Despite the turbulent course of legislative process, which brought numerous uncertainties as to the moment of entry into force of the amended provisions, the obligation to prepare and publish a report on the implemented tax strategy entered into force on 1 January 2021.

ENTITIES UNDER THE REPORTING OBLIGATION

The obligation to prepare and publish a report on the tax strategy executed in the given tax year shall be fulfilled by both individual CIT payers and tax capital groups. Individual CIT taxpayers become bound with the reporting requirement when their revenue exceeds EUR 50m in the tax year for which the report is due. In turn, in the case of tax capital groups, the reporting obligation is not dependent on a revenue threshold and applies both to the entire group and individual companies being part thereof.

An issue which may raise certain doubts among taxpayers is the potential extension of the new reporting obligation to foreign entities conducting business activities in Poland through permanent establishments registered in Poland (i.a. branches). Although not directly indicated by the regulation, it seems that the reporting duties also shall be fullfilled by such entities. Nevertheless, it is possible to satisfy the obligation by furnishing a Polish translation of the report or by publishing it on the website of a related entity within the meaning of the transfer pricing regulations (related entities are, among others, the taxpayer and its foreign taxable entity), if only the obligated entity does not have its own website. It seems, however, that in such situation, the reporting obligation will be limited to providing information on the tax strategy executed in relation to business activities conducted solely in Poland and not the one applied by the taxpayer in their country of residence. Yet, given the lack of accepted practice, it cannot be ruled out that the issue may become the subject of disputes with tax authorities.

Finally, it should be emphasized that the reporting obligation is not applicable to taxpayers being parties to cooperation agreements, within the meaning of Article 20s(1) of the Polish Tax Code.

SCOPE OF INFORMATION

Under the new provisions, the report on the executed tax strategy must cover a vast range of information on the taxpayer's approach applied to perform correct settlement of tax liabilities. The Act introducing the obligation to publish a report on the implemented tax strategy brings an open catalogue of information subject to disclosure. It covers:

- 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,
- information on the taxpayer's performance of tax-related obligations in the territory of the Republic of Poland (including the number of the reported tax schemes),
- information on transactions with related entities (also those not being Polish tax residents) within the meaning of transfer pricing provisions, the value of which exceeds 5% of the balance sheet assets, determined on the basis of last approved financial statement of the company,
- information on taxpayer-planned or taxpayer-performed restructurings which may impact the amount of tax liabilities of the taxpayer and/or related entities within the meaning of transfer pricing provisions,
- information on the submitted applications for tax rulings, binding rate information and binding excise information,
- information on tax settlements made in countries or territories that encourage abusive tax practices.

The scope of published information should consider the nature, type and size of the taxpayer's business. This means that it may be required to disclose other information than those listed above.

At the same time, information subject to trade secret, industrial secret, professional secret and/or manufacturing secret should be excluded from the strategy. However, given that the scope of the above exemption is rather vague and subject to individual interpretation, in order to avoid possible disputes with tax authorities, the possibility of use of the exemption should be subject to a detailed analysis, especially with respect to covering some data with the confidentiality clause.

Considering that the report on the executed tax strategy should also include information on procedures and processes related to the fulfilment of tax obligations, taxpayers should begin with introducing formalized tax procedures, ensuring proper implementation of the new reporting obligation. It is also recommended to draw up a draft of the executed tax strategy which will later serve as a basis for preparing the final report.

DEADLINES

Pursuant to the new provisions, taxpayers will be required to prepare and publish a report on the implemented tax strategy by the end of the 12th month following the end of the tax year to which the report relates. In practice, this means that the initial report on the tax strategy executed in 2020 must be prepared and published by 31 December 2021.

PUBLICATION METHODS

Under the new provisions, the report on the executed tax strategy must be published on the taxpayer's website or on the website of a related entity, in case that the obliged entity does not have one on its own. At the same time, the taxpayer must provide the tax authority with the address of the website on which the information on the tax strategy employed by the taxpayer is published, within the deadline provided for report publication.

The report on the executed tax strategy should be made in (or translated into) Polish.

PENALTIES

Failure in meeting the obligation to prepare and publish a report on the tax strategy executed in the given tax year shall be liable to a fine of up to 120 daily rates, pursuant to the Polish Criminal Fiscal Code. In addition, failure to provide the head of the competent tax office with information about the address of the website on which the report is published is subject to a financial penalty of up to PLN 250,000, imposed by the head of the tax office by means of administrative decision. ■

Grzegorz Wójcik

Corporate Tax Advisory, KPMG in Poland

Stanisław Woźniczka

Senior Consultant, Corporate Tax Advisory, KPMG in Poland

Limited loss

1 January 2021 brought a number of major amendments to the Polish CIT Act. One of the most commented solutions they offer are undoubtedly the extension of CIT obligations to limited partnerships and introduction of the Estonian CIT, both of which have been thoroughly analysed in this issue of CIT Point Magazine.

Meanwhile, the legislator, without much publicity, introduced even more changes being of equal importance to taxpayers, such as restricted right of settling tax losses by entities taking part in reorganizing activities.

LIMITATIONS AT FORCE

Pursuant to Article 7(2) of the CIT Act, if the tax-deductible costs exceed the sum of revenues from a given source, the difference constitutes a tax loss. In subsequent years, the taxpayer is entitled to offset the loss previously incurred under a given source of income against the profit constituting the taxable base. In principle, the loss may be settled in five tax years following the year in which it was incurred. Nevertheless, under the applicable provisions, the deduction in any of the years may not exceed 50% of the loss amount. In 2019, the regulator introduced a taxpayer-facing solution, consisting in the possibility to offset a loss in the amount of up to PLN 5m in any of the five subsequent tax years. If the taxpayer's loss exceeds the amount indicated above, its outstanding amount should be settled on general rules, i.e. further deduction in any of the tax years may not exceed 50% of the loss amount. It should be emphasized, however, that this solution relates solely to losses incurred since 2019.

Simultaneously, the provisions of the CIT Act in force so far provided for certain restrictions on the possibility of reducing the tax base by the value of losses incurred in the past, imposed, inter alia, on companies involved in various reorganization proceedings. Pursuant to Article 7(3)(4) of the CIT Act, the losses incurred by entities which have been transformed, merged, acquired or divided, in a situation where a change of legal form, merger or division of entities takes place, shall not be taken into account when determining the tax base. This, however, did not apply to companies transformed into other companies (e.g. a limited liability company transformed into a joint-stock company).

Furthermore, this meant that merged companies (in mergers by formation of a new company) and acquired companies (in mergers by acquisition) lost the possibility to offset the losses incurred. Nevertheless, the restrictions did not apply to losses incurred in the past by the acquiring company in a merger by acquisition.

Notwithstanding the above, it should be emphasized that the very fact of excluding the possibility of recognizing tax losses by merged and acquired companies constituted a significant breach of the doctrine of universal succession.

However, the regulations in force so far in no way limited the possibility of recognizing losses by taxpayers who made or received contribution-in-kind of an enterprise or its organized part.

NO LOSS OFFSET FOR THE ACQUIRING ENTITY

The amended provisions imposed significant constraints on settling tax losses by entities taking part in reorganizing activities. This is because the list of instances in which tax losses cannot be deducted, following the reorganizing procedures, got importantly extended by the legislator.

Pursuant to the amended regulations, in force as of 2021, the limited possibility of settling losses resulting from restructuring activities will also apply, in some cases, to acquiring companies. Pursuant to Article 7(3)(7) of the CIT Act, when determining the tax base, the taxpayer may not recognize the loss incurred, if the reorganization proceedings in which they were involved resulted in:

1. acquisition of an entity or acquisition of a contribution-in-kind of an enterprise or its organized part or
2. reception of cash contribution, for which the taxpayer purchased the enterprise or an organised part of the enterprise.

Moreover, as a result of the actions taken, one of the following conditions has been met:

a) following such purchase or acquisition, the scope of the core business activity actually carried out by the taxpayer became different, in whole or in part, from the scope of the core business activity actually conducted by the taxpayer prior to such purchase or acquisition, or at least 25% the taxpayer's shares are owned by the entity or entities that did not have rights thereto at the end of the tax year in which the taxpayer incurred a loss.

Therefore, the new provisions will apply to those restructuring proceedings which result in changing the object of business of the acquiring company or the shareholding structure of the acquiring company. According to the Ministry of Finance, the goal of the amendments is to take away the right to settle tax losses from entities that have carried out reorganisation proceeding for economically unjustified reasons. For example, if, within a capital group, the parent company takes over a daughter company without changing its business profile (at the same keeping the existing shareholding structure), it will still be entitled to settle the loss.

PROBLEMATIC CRITERIA

Despite the explanations provided by the legislator, one can get the impression that, although aimed at entities engaging in reorganization proceedings for the sole purpose of achieving tax advantage, the newly introduced limitations on offsetting the loss may backfire on entities performing economically sound transactions.

In the context of premise no. 1 (relating to a change in the scope of actually performed business activity), the situation when, as a result of a merger or receipt of an in-kind contribution, the object of the taxpayer's activity changes only partially, may bring many practical challenges. Should such a situation arise, the limitations will apply only to transactions in which the scope of activity of the acquiring company (receiving the in-kind contribution) remains practically unchanged

and gets expanded only to a small extent with the acquired assets (which may be justified by the synergy of both types of activity). Under the new regulations, the taxpayer will be denied the right to settle its own loss from previous years, even if the income declared in the given year derives in 100% from the activities carried out before the transaction. This, in turn, seems to support the thesis on the legislator's excessive interference with the rights of taxpayers undertaking reorganization activities for economically justified reasons.

On the other hand, the second premise for the application of the new provisions (referring to changes in the acquiring entity's shareholding structure) seems particularly unfavourable from the perspective of downstream mergers. Downstream mergers involve a subsidiary taking over its direct shareholder and are used, inter alia, to simplify organizational structure in capital groups. A characteristic feature of downstream mergers is that the shareholders of the acquired company receive shares in the subsidiary, being the acquiring company. In most cases, this will mean meeting the condition, pursuant to which at least 25% the taxpayer's shares are owned by the entity or entities that did not have such rights at the end of the tax year in which the taxpayer incurred a loss. Thus, even if a downstream merger is performed for economically justified reasons, the acquiring company will lose the right to offset the tax losses incurred.

NO INTERIM PROVISIONS

Another issue relates to periods covered by the new regulations. A question arises whether the reorganization proceedings that took place before the effective date are covered by the scope of the new provisions. Unfortunately, the legislator did not take into account the demands for inclusion of interim provisions made during the bill consultation phase. During the consultations, the Ministry of Finance stressed its intention to apply the new restrictions also to the restructuring proceeding that took place before the amended regulations entered into force.

Restrictive approach adopted by tax authorities is likely to translate into numerous disputes between taxpayers and authorities to be settled by administrative courts. In this context it must be noted that such a stance is in clear opposition to the principle of protection of the taxpayer's acquired rights exhibited in the jurisprudence of the Polish Constitutional Tribunal.

SUMMARY

According to the explanatory memoranda, the goal of the restrictions is to eliminate restructuring operations aimed at artificially inflating the taxpayer's losses in order to reduce the income generated by another enterprise. According to the legislator, the scope of regulations prohibiting the settlement of the loss of the acquired company was too narrow, since it provided for the possibility to use of optimization structures in which entities incurring losses, where the possibility of obtaining income from activity in subsequent years was rather doubtful, acquired another enterprise (or its organized part) which in turn allowed to reduce the original entity's tax base on profitable activities.

While the arguments presented by the authorities is convincing, the scope of the regulations aimed at counteracting optimization practices seems rather excessive. In fact, by introducing the amended provisions, the legislator ‚throws out the baby with the bathwater': on the one hand, it restricts activities aimed at artificial lowering of the tax base, on the other hand, the solution it offers have grave impact on entities engaging in reorganization proceedings for legitimate business reasons, especially in terms of downstream mergers, which by their very definition are covered by loss settlement restrictions provided for by the new regulations. An important flaw of the new solution is the lack of interim provisions that would clearly indicate the timeframes to which the introduced regulations apply. The above-mentioned issues will most likely have a negative impact on the taxpayers' willingness to get involved with restructuring proceedings, even those having sound economic justification, which may have grave implications in the post-crisis reality. ■

Maciej Kopycki

Corporate Tax Advisory,
KPMG in Poland

Further amendments to WHT

The Minister of Finance announced further postponement of the ‚pay and refund' system, as also amending WHT regulation in 2021. Moreover, as of 1 January 2021, the competence of the tax authorities in terms of WHT will be modified. Still, the WHT remitter is obliged to act with due care when making payments subject to WHT.

ANOTHER DEFERAL

On 6 November 2020, the Minister of Finance announced that given the exceptional circumstances of the legislative process, in particular due to the COVID-19 pandemic, the Ministry would issue decrees under which the procedure of compulsory collection of withholding tax at the standard rate, with the right to apply for a refund of the tax (the ‚pay and refund' mechanism), would be suspended. In parallel, a legislative process regarding the planned amendments subject to public consultations will be carried out and finalized in 2021. Therefore, the entry into force of the pay and refund mechanism was postponed by another 6 months, i.e. until 30 June 2021.

CHANGES IN THE PAY AND REFUND MECHANISM

Moreover, in September 2020 during a meeting held by the representatives of the Ministry of Finance with tax advisors, the direction of further changes in the pay and refund mechanism was outlined. The possible amendments thereto include:

- limiting the pay and refund mechanism to payments to related entities,
- limiting the pay and refund mechanism to passive payments (interest, royalties, dividends), with a threshold of up to PLN 2m (excluding intangible services),
- extending the scope of clearance opinions to include tax exemptions and reduced rates under double tax treaties (and consequently changing their name to ‚Preference Opinions'),
- excluding dividends paid to Polish residents from the pay and refund mechanism,
- indicating at the statutory level that the conditions of exercising due diligence shall be stricter for payments made to related entities than for payments made to unrelated entities,
- introducing changes as to the procedure of signing the statement on applying WHT preference (WH-OSC), i.e. under the new provisions it would be signed in accordance with the rules of representation and not by the entire management board,
- the clearance opinion, if already issued, will apply from the date of entry into force of the pay and refund mechanism.

Furthermore, the Ministry of Finance representatives confirmed that they had been working on the final version of the explanatory notes to the new provisions, the draft of which was published on 19 June 2019.

CHANGE OF THE TAX OFFICE COMPETENT IN WHT

Moreover, it is worth noting that the Ministry of Finance and the National Fiscal Administration work to change the competence of specialised tax authorities. Starting from 1 January 2021, specialized tax offices will be competent for medium-sized and large companies. Instead, the matters of the largest businesses in Poland are now handled by the First Mazovian Tax Office in Warsaw. Furthermore, the Tax Office in Lublin will handle WHT-related matters across the country.

DUE DILIGENCE

From 1 January 2019, withholding tax remitters are required to act in line with the due diligence principle. The obligation of due diligence applies to all payments (regardless of their amount) that are subject to WHT in accordance with the provisions of the CIT Act. At the same time, the remitter is obliged to exercise due diligence considering the nature and scale of their business. It should be emphasized, however, that the tax remitter cannot be released from liability, inter alia, when the remitter and the taxpayer are related entities.

Verification of the conditions for applying the exemption, reduced rate or non-collection of WHT cannot be limited only to the scope of provisions that directly relate to withholding tax, i.e. the subject of taxation, the status of the recipient of the payment, WHT rates. In fact, in relation to payments subject to WHT, the authorities may apply anti-tax avoidance clauses: the General Anti-Avoidance Rule (GAAR), Specific Anti-Avoidance Rules (SAAR) as well as PPT and LoB rules. This means that when making payments subject to WHT, the remitter should be able to give the economic justification for the transaction, understand the recipient's ownership/capital structure and be aware of the recipient's economic substance (i.e. their functions, assets and risks).

Failure to exercise due diligence may have grave consequences. The remitter may be required to pay the basic WHT rate (usually 20% or 19%) along with interest for late payment. Moreover, the remitter may be also subject to sanctions provided for by the Tax Ordinance (the so-called additional tax liability) amounting to 10% of the gross value of receivables subject to WHT. Regardless of the sanctions stipulated by the CIT Act and the Tax Code, the tax authorities may apply penalties to individual persons responsible for WHT settlements under fiscal penal provisions.

INTERNAL WHT PROCEDURE

As a part of due diligence, the WHT remitters apart from supporting their approach with applications for clearance opinions or tax rulings, should introduce an internal procedure that let to verify the terms of payment, including documentation, and assign WHT-related obligations to appropriate employees. The WHT procedure is also part of the new obligation related to the implementation of the tax strategy. ■

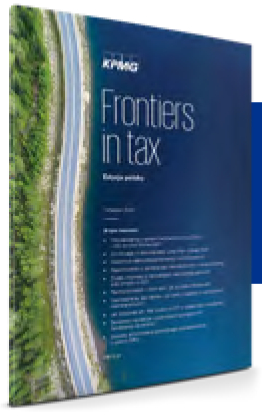
Iwona Krzemińska

Manager, Corporate Tax Advisory, KPMG in Poland

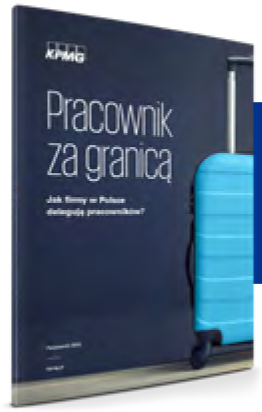
Publications

CITPoint Magazine
Wrzesień 2020

CITPoint Magazine
Maj 2020



Frontiers in tax



Pracownik za granicą.
Jak firmy w Polsce delegują pracowników?

Roczne zeznania podatkowe Polaków PIT 2019

Check our publications related to business resilience in the new reality and see how KPMG experts can support your company in these challenging times. Questions? Contact us at: mampytanie@kpmg.pl to receive expert support in the given domain.

Contact

KPMG Poland

KPMG w Polsce
ul. Inflancka 4A
00-189 Warszawa
T: +48 22 528 11 00
F: +48 22 528 10 09
E: kpmg@kpmg.pl

Find us:
kpmg.pl youtube.com/kpmgpoland
facebook.com/kpmgpoland
twitter.com/kpmgpoland
linkedin.com/company/kpmg_poland
instagram.com/kpmgpoland
pinterest.com/kpmgpoland
webcasty.kpmg.pl

Anna Sińczuk
Tax Advisory
Partner
E: asinczuk@kpmg.pl
T: +48 22 528 11 92

Przemysław Szywacz
Tax Advisory
Partner
E: pszywacz@kpmg.pl
T: +48 22 528 10 03

Wojciech Majkowski
Tax Advisory
Director
E: wmajkowski@kpmg.pl
T: +48 22 528 16 80

KPMG offices in Poland

Warszawa	Kraków	Poznań	Wrocław	Gdańsk	Katowice	Łódź
ul. Inflancka 4A	ul. Opolska	ul. Roosevelta 22	ul. Szczytnicka	al. Zwycięstwa 13A	ul. Francuska 36	ul. Składowa 35
00-189 Warszawa	114 31-323 Kraków	60-829 Poznań	11 50-382 Wrocław	80-219 Gdańsk	40-028 Katowice	90-127 Łódź
T: +48 22 528 11 00	**T:** +48 12 424 94 00	**T:** +48 61 845 46 00	**T:** +48 71 370 49 00	**T:** +48 58 772 95 00	**T:** +48 32 778 88 00	**T:** +48 42 232 77 00
F: +48 22 528 10 09	**F:** +48 12 424 94 01	**F:** +48 61 845 46 01	**F:** +48 71 370 49 01	**F:** +48 58 772 95 01	**F:** +48 32 778 88 10	**F:** +48 42 232 77 01
E: kpmg@kpmg.pl	**E:** krakow@kpmg.pl	**E:** poznan@kpmg.pl	**E:** wroclaw@kpmg.pl	**E:** gdansk@kpmg.pl	**E:**katowice@kpmg.pl	**E:** lodz@kpmg.pl

kpmg.pl

mampytanie@kpmg.pl