

WHT reclaim opportunities for foreign investors in Poland

Exemption from withholding tax (WHT) in Poland and double taxation reliefs • Higher return on debt and equity investments • Enhancing portfolio performance • KPMG Poland's expert know-how • Comprehensive WHT advisory and reclaim services

Why does it matter?

Foreign investors (both EU and non-EU) may be entitled to withholding tax (WHT) exemption in Poland (e.g. pension funds, investment funds).

Recent changes to the WHT regulations resulted in a disturbance of a well-established market practice (switch from a relief at source to a pay & refund mechanism). After several postponements, starting from 2022 the pay & refund mechanism will enter into force, but in a modified form.

New, "revolutionary" WHT rules, have significantly changed the existing market practice. In light of additional requirements, such as the "due care" standard and the associated increased liability exposure, tax agents are currently much more reluctant to apply any WHT exemptions / reductions at source. Pursuant to the most recent WHT amendments (entering into force starting 1 January 2022) applicability of the pay and refund mechanism has been largely limited and the beneficial owner (BO) definition has been further modified. It remains to be seen how these amendments will affect the practice of both WHT agents and tax authorities and thus what implications they will have for foreign investors.

Consequently, more and more foreign taxpayers suffer increased WHT costs on Polish investments.

Our response to your needs

when the tax has already been paid

- **Feasibility check** [whether an entity is entitled to apply a reduced WHT rate or tax exemption based on (i) EU law / CJEU rulings (i.e. Aberdeen and Santander decisions); (ii) double tax treaties; and (iii) domestic law]
- **Cost-benefit analysis** based on materiality thresholds
- **Comprehensive support** during the WHT reclaim and refund procedure
 - **One claim may cover 5 years backwards and WHT paid on various types of investments**
- **Interest on overpayments** may apply

when the tax hasn't been withheld yet

- **Case-by-case analysis of taxpayers' eligibility for reduced WHT rates / WHT exemptions** under both domestic and EU law, including comparability analysis and beneficial owner status
- **Advice on WHT strategy**
- **Preparation of respective documentation / statements** required to apply for tax benefits at source
- **Comfort letters** – certificates of independent tax advisors or attorneys-at-law backing the applicability of particular tax benefits with respect to foreign taxpayers (in support of the due care requirement vested in tax agents)
- **Preparation of binding ruling applications** and representation of taxpayers before tax authorities / courts throughout the entire process

Why KPMG Poland?



Dedicated and experienced team of attorneys-at-law and licensed tax advisors



Ongoing monitoring of constantly changing Polish tax law environment / direct involvement in the legislative process within working groups



Ca. PLN 0.5 billion of WHT recovered for our clients to date



Flexible remuneration models (subject to individual arrangement)



Over 10 years of experience in WHT reclaim proceedings including representation of the Client in the landmark CJEU Emerging Markets Series case (C-190/12)

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