Real Estate Tax Services News

Keeping you informed

Poland – September 2020

Plans to tax limited partnerships and selected general partnerships with corporate income tax (CIT) plus other major changes revealed

In brief

The Polish Government has announced a plan to amend the Corporate Income Tax and Personal Income Tax Laws in the third quarter of 2020 (it is assumed with effect from 1 January 2021). Currently, only general information on the aims of the reform has been published. The exact wording of the amendments is yet to be announced. Nevertheless, the changes appear to be fundamental.

Taxation of limited partnerships and selected general partnerships with CIT

Based on the information provided, it seems that the Government's objective is to tax limited partnerships, having their seat or place of management in Poland, with corporate income tax (CIT). CIT shall be applicable also to those registered partnerships, in which "*partners participating in earnings are hard to identify*".

Full details of the planned changes have not been revealed. It is not clear whether the Government intends to tax partnerships based on general rules or to introduce a special taxation regime for such entities. In practice, this means that the tax transparency of these entities may be restricted or eliminated, and double taxation may occur (once at the level of partnership and subsequently at the level of partners).

Taxation of tangible liquidation proceeds

It was announced that Article 14a of CIT Law will be amended in such a way so as to tax, based on this regulation, tangible liquidation proceeds (liquidation proceeds other than cash).

Changes in taxation of gain on disposal of real estate-rich companies

The Government plans to change the rules for taxing the sale of real estate-rich companies. Based on the information provided, it will be the real estate-rich company rather than its shareholder which will be liable to reconcile tax on gains resulting from sale of shares.

Changes in thin capitalisation

Changes in thin capitalisation rules were also announced. Whilst no details were provided, it is likely that the Government will inter alia seek to set deductibility thresholds at 30% of tax EBITDA, not less than 3 million Polish zlotys (PLN) (rather than 30% + 3m PLN currently applicable based on court rulings).

Depreciation write-offs reflecting the actual decrease of the asset value

It is also planned that the rules of tax and accounting depreciation shall become more aligned. The stated aim of this is to make tax depreciation write-offs aligned with the actual decrease of the assets value. No details were announced.

Limiting depreciation rate while applying a tax exemption

According to the information provided, the taxpayer's right to set the tax depreciation rate will be limited during any period in which the taxpayer benefits from a tax exemption. This seems to be aimed in particular at limiting tax optimisation by investors operating in Special Economic Zones and so-called Polish Investment Zones.

Obligation for CIT taxpayers to hold publicly available tax policy

It is planned that the CIT taxpayers will be obliged to hold publicly available "tax policy". No further details in this respect have been provided.

9% CIT rate available to taxpayers whose income does not exceed 2 million EUR

The 9% CIT rate shall be applicable to taxpayers whose income does not exceed 2m EUR. Currently, the limit is 1.2m EUR.

Other amendments

Other announced amendments include:

- providing shareholders of general partnerships with the right to verify the correctness of the partnership's tax settlements;
- changes in the taxation of non-residents aimed at aligning Polish local tax regulations with the text of double tax treaties amended by the Multilateral Convention to Implement Tax Treaty Measures and Prevent Base Erosion and Profit Shifting ("Multilateral Instrument", or MLI);
- obligation to apply the "arm's length" principle to transactions where the beneficial owner is located in a "tax haven", and to prepare transfer pricing documentation for such transactions;
- changes in the rules for taxation of Polish residents earning income in a jurisdiction to which the credit method for relief from double taxation is applicable (abolition of the exemption for the surplus of taxes due in Poland over the tax paid abroad);
- prolonging the exemption from the minimum tax in relation to commercial real property for the duration of epidemics;
- changes in the taxation of personal income in relation to the tax on registered income without deductible expenses (*ryczałt od przychodów ewidencjonowanych*).

Our view

Currently, only the outline of the proposed changes has been published. Nonetheless, it seems that these changes are likely to have a significant impact on real estate business. In particular, amendments concerning the tax deductibility of debt financing and the amount of available tax depreciation write-offs may affect the amount of tax liability due on the daily activities of Polish property companies.

Exit strategies may also be affected. The regulations under which a Polish real estate-rich company is taxable on the sale of its shares are likely to be applicable not only to the direct sale of shares in a Polish company but also activities involving companies directly or indirectly owning Polish real estate-rich companies (eg, the sale or redemption of shares in the Polish real estate-rich parent company may potentially also be affected). Furthermore, it cannot be excluded that the announced adjustment of Polish tax law to MLI standards may lead to a redefinition of the status of a real estate company (eg, by extending the period during which the company is still considered to be real estate rich after the disposal of real estate).

Taking the above into account, further developments should be closely monitored, in particular if any transactions or group restructurings are planned within the next year.

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