



TAX
ADVISORY

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Changes in Polish CIT for 2022

The most important changes in Polish CIT for 2022 are as follows:

I. Easing the conditions for CIT flat taxation (the so-called "Estonian CIT")

- limited partnerships and limited joint-stock partnerships will be eligible to apply the Estonian CIT;
- repeal of the obligation to pay the so-called "entry tax" (difference between the accounting and tax result calculated before applying the Estonian CIT) in case of application of the Estonian CIT for at least 4 years;
- repeal of the capital expenditure requirement;
- repeal of the upper limit of revenue for entities with the right to apply the Estonian CIT;
- reduction of the flat tax rate to 10% for small taxpayers and 20% for other taxpayers (effective CIT+PIT taxation will amount to 20% for small taxpayers and 25% for other taxpayers; under different interpretation of the provisions lower rates may apply).

II. Polish holding company (new CIT holding regime)

- introducing the concept of the Polish holding company which may apply only to the Polish joint stock companies and limited liability companies conducting actual business activity and the concept of "subsidiary" which may apply only to companies in which the Polish holding company holds at least 10% of shares/stock for at least 1 year (not applicable to the Polish real estate companies and companies which hold at least 5% shares/stock in other companies);
- tax exemption will apply under the certain conditions to:
 - 100% of income derived from the sale of shares (stock) in a subsidiary to a non-related entity;
 - 95% of dividend received by the Polish holding company from its subsidiary.

III. Tax reliefs

- a) consolidation relief – additional deduction from the tax base of the transaction-related costs (e.g. notarial and advisory fees) incurred on acquisition of shares (stock) in a non-related company that conducts a similar core business activity to the buyer (and subject to other additional conditions) – maximum PLN 250 000 annually;
- b) IPO relief – additional deduction from the tax base of 50%-150% of tax costs related to the IPO process;
- c) relief for prototypes – additional deduction from the tax base of 30% of selected costs related to the production of a sample product (i.e. purchase of fixed assets necessary for the trial production, costs of surveys and expertise) – maximum 10% of income;

- d) business expansion relief – additional deduction from the tax base of the selected costs incurred to increase products sale (i.e. organization of trade fairs, production of new packaging) – maximum PLN 1 Mio annually;
- e) relief for robotization – additional deduction from the tax base of the 50% of selected costs related to the purchase and commissioning of industrial robots;
- f) the possibility to benefit from the R+D relief and IP Box regime at the same time, increase of R+D deductions for selected taxpayers (e.g. research and development centers), the possibility to deduct R+D relief from advances on PIT paid for the innovative employees;
- g) CSR relief – additional deduction from the tax base of 50% of selected costs incurred on supporting sports, cultural and science activity.

IV. Withholding tax

- limitation of the regulations on payments over PLN 2 Mio per year in the so-called “pay and refund” system, to the payments classified as passive (dividends, interest, royalties) made to the foreign related entities. This regime will not include payments for intangible services;
- extension of the scope of binding ruling (opinion) on the application of the WHT exemption to all cases where reduced WHT rate may apply (regardless of the type of preference, including exemptions and exclusions);
- the possibility to sign the statement regarding no tax collection / application of a reduced WHT rate in accordance with the rules of representation (not the entire management board) and to use a copy of the certificate of residence, regardless of the amount and recipient of the payment.

V. Minimum income tax

- minimum income tax for companies and tax capital groups (regardless of the amount of revenues) which report losses from the operational business activity or report on this activity the profitability amounting to 1% or less (in some cases, the possibility to calculate profitability for a group of companies);
- minimum income tax will not apply to certain entities (e.g. 30% reduction of revenues compared to the previous year);
- the minimum income tax will amount to 10% (the tax base) of:
 - 4% of revenues from the operational sources (other than capital gains) and
 - debt financing costs, incurred for the benefit of related entities exceeding 30% of tax EBITDA and intangible services and license fees in the part exceeding PLN 3 Mio and 5% of tax EBITDA,
 - deferred tax related to disclosure of intangible assets which were not depreciated yet, reduced by the value of deductions (donations and tax reliefs) and the value of the income obtained from special economic zone/from business activity specified in the decision on support;
- the tax shall be payable annually with the right to settle with the due CIT for the tax year and next 3 years.

VI. Repeal of the limitation on tax costs related to the purchase of intangible services from related entities

- repeal of the article 15e CIT.

VII. Limitations on tax depreciation of real estate

- tax depreciation of buildings and residential premises will no longer be allowed (except depreciation in 2022 of real estate acquired/built till the end of 2021);
- commercial buildings and premises - depreciation limited to the amount of the accounting write-offs (there are some uncertainties about the application of this limitation to the real estate accounted as investment).

VIII. Limitations on tax settlement of debt financing costs (thin capitalization)

- the limit for debt financing costs (for related and non-related entities) will be set at PLN 3 Mio or 30% of tax EBITDA;
- the costs of financing received from related entities for capital transactions will be non-tax deductible.

IX. New restrictions regarding reorganizations



- exemption from taxation of revenues - applicable only to reorganizations (i.e. exchange of shares, mergers, divisions) performed once (the first reorganization in "chain");
- the above mentioned exemption will depend on (for specific reorganization cases) among others the market value of the acquired assets being equal to the market value of the shares / stock issued by the acquiring entity as well as the continuation of the tax valuation of the assets taken over by the acquiring entity;
- reduction in the capital input made to the company which is not a CIT taxpayer will be taxed the same as withdrawal from the company.

X. New restrictions regarding controlled foreign companies (CFC)

- extension of the list of passive revenues qualifying for CFC – among others revenues from intangible services, receivables;
- the effective CIT rate will be verified (below which qualification as CFC applies) - 14.25% (currently 9.5%);
- the new types of CFC: entities whose revenues per year are lower than 30% of the accounting value of assets classified as passive (CFC taxation 19% per year on 8% of the value of the above mentioned assets) and entities whose revenues exceed 20% of specified accounting values (CFC taxation 19% on their income).

XI. Tax on the so-called "shifted profits" – 19% CIT

- taxation (19% CIT) on expenses (including among others intangible services, royalties, debt financing costs, the services in which the value added is negligible) incurred on behalf of related entities outside the EU/EEA if the effective CIT rate is lower than 14.25% and these expenses are then paid by the recipient as a dividend or included in the tax costs by the recipient (the taxpayer is the Polish paying entity);
- these above mentioned rules are applicable if expenses constitute at least 3% of the tax costs of the paying entity and at least 50% of the recipient's revenues.

XII. Remaining selected changes

- a) tax capital groups - facilitating the creation and operation of tax capital groups (including the abolition of the current 2% profitability condition);
- b) the so-called "hidden dividend" distributions (entry into force: 1st January, 2023) – lack of the possibility to include in the tax costs expenditures incurred from related entities if they depend on the taxpayer profits or when the expenditures exceed their market value or constitute a remuneration for the use of assets belonging to the shareholder before the establishment of the taxpayer (in the latter two cases, provided that their sum does not exceed the taxpayer's gross profit);
- c) exit tax – extension of exit tax to "cross-border transformations";
- d) support decision (Poland Investment Zone) – limitation of the exemption to new investment performed on the territory defined in the support decision, introduction of a small anti-abusive clause for the above mentioned exemption;
- e) transfer prices – changes among others in the transfer pricing adjustment mechanism, new exemptions for the obligation to prepare local transfer pricing documentation (among others in a case of micro- and small entrepreneurs), extension of deadlines;
- f) clarification of the definition of a Polish tax resident (a company managed in the territory of Poland, when its ongoing matters are handled in Poland in an organized and continuous manner);
- g) the new obligation for CIT taxpayers to submit annually the accounting books, within the deadline for submitting the annual CIT return (the obligation will be introduced for periods starting after 1st January, 2023).

If you are interested in obtaining further information, or would like to discuss the impact of the above changes please contact:

Bartosz Głowacki

Bartosz.Glowacki@mddp.pl

+48 603 980 382



Agnieszka Wnuk Agnieszka.Wnuk@mddp.pl +48 667 661 767

Magdalena Zamojska Magdalena.Zamojska@mddp.pl +48 606 234 976

Jacek Wojtach Jacek.Wojtach@mddp.pl +48 600 389 333

or your advisor at MDDP.

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