



TAX
ADVISORY

Tax Alert No. 264/08.11.2022



Key changes to the CIT for 2023

Hidden dividend as basis for new tax

- Repeal of the so-called hidden dividend provisions. These provisions were due to come into effect from 1 January 2023.

Minimum income tax

- Suspension of the entering the minimum income tax until the end of 2023.
- Changes to the construction of the minimum tax:
 - increase of the profitability ratio below which the minimum tax is due to 2%;
 - introduction of an alternative method for determining the tax base;
 - changes to the methodology for calculating of loss and the share of income / revenue by introducing additional exclusions;
 - Extension of the catalogue of entity exempt from minimum CIT tax.

Polish Holding Company (PHC)

- Exemptions from taxation of the entire dividends received by PHC (in 2022, the exemption applies to 95% of dividends);
- Allowing multi-tier structures - removal of the restriction on the maximum threshold of 5% ownership of shares in other companies by a subsidiary;
- Exclusion of the 'pay and refund' mechanism for dividends paid by a subsidiary to a PHC;
- Removal of the restriction on the application of the PHC regime to companies benefiting from exemptions in economic zones (SEZ or PSI).
- Extension of the holding period for meeting the conditions necessary for the application of holding regime, to 2 years (inter alia, the period of holding at least 10% of the shares in the capital of the subsidiary);
- PHC can take the form not only of a limited liability company and a joint stock company, but also of a simple joint stock company

Tax on shifted income

- Clarification that the tax on shifted income applies to passive income of entities having their registered office outside Poland.
- Amendment of the definition of shifted income - costs incurred for the benefit of a related entity - non-resident, if, in accordance with the tax regulations in force in the country of the related

entity's registered office, management, registration or place of location, the income (revenue) of this entity obtained from one of the titles listed in Article 24aa(3) of the CIT Act (which contains a catalogue of costs subject to this tax):

- are taxed at a tax rate lower than 14.25 per cent. or
- are subject to exemption or exclusion from the tax.
- A new mechanism according to which, when calculating whether an affiliated entity receives at least 50 per cent of the revenue from passive dues, revenue received both from a potential Polish taxpayer of passive income tax and from any other Polish companies that are affiliated entities should be taken into account.
- Clarification of condition regarding the transfer of 10% of revenues received from a Polish entity to another entity,
- Clarification that costs incurred, which may be subject to tax on the shifted income, are to be included by the taxpayer as tax deductible costs.
- Clarification of the application of provisions on shifted income to CIT tax groups;
- The conditions for the recognition of costs incurred as shifted income will automatically be deemed to be met if they were incurred for the benefit of a related entity with its registered office, management or place of registration in a territory applying harmful tax competition or with which Poland or the EU has not ratified an agreement providing a basis for the exchange of tax information, if this entity is not a foreign controlled entity and its revenues have not been taxed in Poland.
- Introduce the appropriate application of the provisions on tax on shifted income to certain schemes using tax transparent entities.

Costs of debt financing

- Clarification of the amount of the limit of debt financing costs included as a tax deductible costs - the excess over the higher of: PLN 3 million or 30% of the so-called tax EBITDA value;
- Exclusion of the limitation of debt financing costs in relation to certain equity transactions (acquisition of shares in an unrelated entity) if financing was provided by a bank with its registered office in the EU/EEA

Flat rate tax on the income of companies – Estonian CIT

- Amendment of the rules for determining income in the case of the use of assets for both business and non-business purposes.
- Clarification of the rules on the expiry of the liability for the initial adjustment;
- Clarification regarding the time limit for payment of tax on "transformation income";
- A number of changes of a technical nature.

Withholding tax

- Change regarding the deadline for filing and validity of the so-called original WHT-OSC statement - the statement must be filed no later than on the last day of the second month following the month in which the PLN 2 million limit was exceeded. If the payer, after filing the original statement, makes subsequent payments to the same counterparty, the preferential withholding tax rules (on the basis of the first statement) will be applicable by the payer until the last day of the tax year in which it filed the statement. The obligation to submit a follow-up statement does not arise until the last day of the month following the end of the tax year.



Controlled Foreign Company

- Tightening of regulations - the reliefs and exemptions listed in the CIT Act are not taken into account when determining the income of a CFC company

Transfer pricing

- Repeal of provisions on obligation to prepare documentation for indirect tax haven transactions.
- Raising the documentation thresholds for direct haven transactions carried out with both related and unrelated parties - these will be PLN 2.5 million in the case of financial transactions and PLN 500,000 in the case of non-financial transactions.
- Clarification regarding TPR obligations in the case of transactions with tax havens.

Entering into force

- The Act's introductory provisions are worth noting. Most of the changes will come into force on 1 January 2023, but some of the changes will apply from 1 January 2022 - e.g. the clarification regarding debt financing costs or some of the changes regarding transfer pricing.
- The enacted legislation also contains intertemporal provisions on when the various changes take effect for companies with a tax year other than the calendar year.

If you are interested in the above information and its impact on your business, please contact:

Monika Dziedzic Monika.Dziedzic@mddp.pl tel. 501 104 156

Gniewomir Parzyjagła Gniewomir.Parzyjagla@mddp.pl tel. 664 718 736

or your advisor at MDDP.

MDDP is one of the largest Polish companies providing comprehensive consulting services in the area of taxes, law, business consulting, corporate finance, accountancy and payroll outsourcing, as well as professional trainings and conferences.

Since 2004, we have been continually increasing the team of advisers equipped with experience acquired both in reputable advisory companies and the largest enterprises on the Polish market. Our Clients include leading international corporations and the largest Polish companies from all sectors of economy.

We consider trust to be the basis of successful cooperation. We support our Clients in taking the most important business decisions.

We combine international experience in business with the knowledge of regulations and the specificity of a given industry. We focus our activities mainly on the Polish market and ensure full involvement and individual approach to the cooperation.

This Tax Alert does not constitute legal or tax advice. MDDP Michalik Dłuska Dziedzic i Partnerzy spółka doradztwa podatkowego spółka akcyjna shall not be liable for the use of the information contained in the alert without prior consultation with legal or tax advisors.