

Changes in cross-border and domestic reorganizations

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On September 15th, 2023 an amendment to the Polish Commercial Companies Code came into force, introducing new types of domestic and cross-border reorganizations. Following the amendment, changes to income tax acts and Tax Ordinance were also implemented.

Changes related to cross-border reorganizations aim to implement EU directives (Directive No. 2019/2121 and Directive No. 2019/1115). At the same time, Polish legislator decided to introduce changes regarding domestic reorganizations.

What specifically has changed?

1. **The possibility of a cross-border transformation (i.e., relocating the registered office of a company between Poland and another EU country without liquidation) or cross-border division of Polish capital company or a limited joint-stock partnership** was introduced. The rules set out in the Polish Corporate Income Tax Act for determining the initial value of fixed assets and intangible assets and rights in the case of a change of legal form, division, or merger were extended to a cross-border transformation.
2. There is a new requirement to obtain an opinion on cross-border transformations, mergers or divisions from the Chief of the National Tax Administration. **The opinion assesses whether a cross-border operation constitutes tax avoidance or is conducted for the purpose of abusing the law.** The rules and procedure for issuing the opinion are provided in the amended provisions of Tax Ordinance.
3. **A new, simplified (non-emissive) type of national and cross-border merger (merger by acquisition) was introduced.** The regulations of income tax acts were modified in relation to the method of determining the tax deductible costs in the case of the sale of shares (stocks) of the acquiring company when the merger was performed without the issuance of shares (stocks) of the acquiring company.
4. A new type of national division (division by separation) was also brought in. Division by separation involves legal and tax succession on terms analogous to division by spin-off (modified Article 93c of the Tax Ordinance). The tax neutrality of division by separation will depend on meeting some of the conditions insofar provided for division by spin-off (concerning the continuation of the tax valuation, and the existence of economic justification for the transaction).

It is already known, however, that not all legal or tax aspects have been regulated comprehensively, and some of the new provisions raise interpretational doubts.

How can we assist?

- ✓ we will conduct an analysis of your current situation in terms of the possibility of applying new types of domestic or cross-border reorganizations,
- ✓ we will assess the tax consequences of a specific type of reorganization, taking into account international taxation rules,
- ✓ we will provide tax support during the implementation of a reorganization (mergers, divisions, cross-border transformations),
- ✓ we will analyze and present possible options of group cash flows for tax purposes after completion of the reorganization, e.g. from the perspective of tax deductible costs, category of taxable revenues or withholding tax.

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

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