

TAX ALERT

JANUARY 2016



Tax
Audit
Advisory
Accounting

Check which changes in CIT effective from 1 January 2017 apply to your company

Since 1 January 2017, a number of significant amendments to Corporate Income Tax Act (CIT) have become effective. As they affect business activity, below you may find a list of the most important amendments with our practical commentaries on their effects on your business.

15% CIT RATE

The following entities are entitled to the 15% CIT rate:

- **minor taxpayers**, i.e. entrepreneurs, whose gross revenue did not exceed EUR 1.2 million in the previous year;
- taxpayers **starting a businesses** (the entitlement will be applicable in the fiscal year in which the business was started) irrespective of the revenue level.

Taxpayers who have undertaken restructuring activities allowing them to obtain minor taxpayer status (e.g. dividing or transforming the form of a business) shall not be entitled to the 15% CIT rate. This exclusion shall remain effective in both the fiscal year when an entity was established, and in the following one.

PAYMENT METHOD AND TAX COST

Since 1 January 2017 a kind of CIT sanction has been introduced in the form of the **exclusion of cash expenses from tax costs** that applies to payments for a transaction whose one-time value (regardless of the number of payments resulting therefrom) exceeds **PLN 15,000**.

This is a drastic change in the regulations. It should also be mentioned that the current limit from which an entrepreneur should make payments via bank transfer is four times higher - as much as EUR 15,000. Additionally, the CIT Act does not provide for any sanctions for exceeding such limit.

Pursuant to the transitional provisions, the new rules shall be applicable only to payments made in the fiscal year commencing after 31 December 2016.













In summary, as of 2017, any payments for transactions over PLN 15,000 should be made via bank transfer. Cash payments exclude the possibility of these expenses being tax deductible.

It is also worth adding that despite numerous concerns, it will still be possible to settle liabilities of over PLN 15,000 in the form of **set-off, netting or barter deals**. The first interpretations of tax authorities have already confirmed this.

TAXATION OF AGIO

Till the end of 2016, making an in-kind contribution to a corporation in a form other than an enterprise or its organised part created taxable revenue for the entity making the in-kind contribution, in the amount equal to the face value of the taken-up shares. The value of share premium allocated to capital other than share capital (e.g. supplementary capital), i.e. agio – was not subject to taxation.

	<p>As of the new year, the above-mentioned rules for the taxation of in-kind contributions have been changed. Making an in-kind contribution to a corporation generates taxable revenue equal to the value of the in-kind contribution (as defined in the Articles of Association or Deed of Incorporation, or market value - if the contribution value has not been determined in the Articles of Association or Deed of Incorporation) for the contributor.</p> <p>It should be also stressed that undervaluation of an in-kind contribution presented in the Articles of Association or Deed of Incorporation may result in assessment of its market value by the tax authorities shall estimate the revenue.</p>
DETERMINATION OF THE NEUTRALITY OF SHARE EXCHANGE	<p>The new provisions include the implication that an exchange of shares without any justified economic reasons shall be considered as an activity aimed at avoiding or evading taxation, which in turn makes it necessary to apply CIT on such transactions.</p> <p>Prior to performing an exchange of shares we recommend a detailed analysis of business and economic conditions to come up with arguments justifying the transaction from an economic point of view (in the event of any potential dispute with the tax authorities regarding its tax neutrality).</p>
DEFINITION OF INCOME GENERATED IN POLAND BY NON-RESIDENTS	<p>The legislator decided to define income generated within Poland by non-residents, i.e. foreign entities. In compliance with the new wording, income generated in Poland shall be deemed to mean settled debts, including those subject to a payment order, paid-up or deducted by Polish taxpayers for the benefit of their overseas contracting parties (suppliers, service providers), regardless of the place of contract execution or performance of a service.</p> <p>This amendment has a significant impact on issues related to the collection of so-called withholding tax (to date, certain discrepancies existed in that respect). In the new legal circumstances, it shall be insignificant whether a given service (e.g. a car rental service) is rendered in Poland or not. The very fact of paying debts for such a service by a Polish taxpayer to the benefit of its foreign contracting party (service provider) may make the collection of withholding tax and an obligation to submit information with the tax office necessary (IFT declaration, Information on revenue (income) derived by non-resident natural persons).</p>
"BENEFICIAL OWNER" CLAUSE	<p>Further on the subject of withholding tax, as of the new year, claiming an exemption from withholding tax legally depends on whether the receiving company is the beneficial owner of the paid receivables (interests, royalty payments). A beneficial owner clause has been entered into the CIT Act (the beneficial owner is the entity receiving a given payment for its own benefit, who is not an intermediary, trustee or agent).</p> <p>It should be stressed that the introduction of such a clause means that the payment of remuneration to an intermediary (e.g. in case of using its services when buying air tickets) or an agent (e.g. in <i>cashpooling</i> contracts) may make it necessary to collect withholding tax, which had been a disputable issue till the end of 2016.</p>
TRANSFER PRICING	<p>Please note that as of 1 January 2017, significant amendments have been made to transfer pricing regulations, expanding important documentation duties and introducing the necessity to conduct <i>benchmarking</i> analyses. The new obligations in this respect have been presented in detail in our previous tax alerts – available at www.tpa-group.pl in section: Publications&News/Newsletters/Alerts 2016.</p>

TAXATION OF INVESTMENT FUNDS	As of 1 January 2017, some investment funds (both Polish and foreign) so far CIT exempt have been covered with CIT-payer status. Therefore, we recommend that you read our previous tax alert available at www.tpa-group.pl in section: Publications&News/Newsletters/Alerts 2016.								
TAX ALLOWANCE FOR R&D ACTIVITIES	<p>Amendments to tax allowance for R&D activities have become effective from the beginning of the new year. The catalogue of eligible costs has been supplemented with costs related to the granting of patents, protection rights for utility models and registration rights for industrial designs. This regulation applies to micro, small and medium enterprises (SMEs).</p> <p>Additionally, the maximum amount of deduction of eligible costs from the tax base was increased:</p> <ul style="list-style-type: none">■ personnel costs - from 30% to 50% for all taxpayers,■ other eligible costs - from 20% to 50% in the case of SME taxpayers and from 10% to 30% in the case of other taxpayers. <p>The period during which a taxpayer may deduct the part of eligible costs unused due to low income or incurred losses was also extended from 3 to 6 years. The new regulations have also introduced cash returns for start-ups if the amount from which eligible costs are to be deducted exceeds the amount of earned income or if the taxpayer incurred a loss.</p>								
OUR PROPOSAL OF COOPERATION	<p>Due to the nature and significant number of amendments to VAT and CIT as of 2017, we recommend that you perform a review of how these amendments will affect your business and what new obligations these will create for your company.</p> <p>Upon your request, we provide assistance in analysing amendments to tax regulations and developing solutions and procedures aimed at adapting your company to the changes and protecting it against any potential tax risk.</p> <p>We also encourage you to benefit from our offer of closed tax training courses for your employees. The purpose of such training courses is to explain and systematise information about amendments to tax regulations. Our training courses are distinguished above all by free communication between our experienced tax advisors and your employees, open discussion, clarification of any doubts as well as time saving for your employees, who do not need to waste time for traveling to off-site workshops and training sessions.</p>								
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