

THE LATEST TAX CHANGES IN 2019

In 2019, the Polish legislator introduced numerous changes in tax regulations, in particular in corporate income tax act. Since the beginning of the year new rules have been introduced in terms of transfer pricing, the new withholding tax system, the way passenger vehicles expenses are settled and the lowered 9% CIT rate for the smallest enterprises. Another point worth noting is the set of completely new regulations introduced to the Polish tax law, regarding the “Exit Tax” and the “additional tax liability.”

TRANSFER PRICING

Compared to currently existing regulations, the provision on transfer pricing will undergo major changes.

New documentation thresholds. Related entities are obliged to draft local transfer pricing documentation for homogeneous controlled transactions, whose value, reduced by the amount of VAT, has exceeded the following documentation thresholds in a fiscal year:

- PLN 10,000,000 - in case of a commodity or financial transaction,
- PLN 2,000,000 - in case of a service transaction,
- PLN 2,000,000 - in case of other transactions.

According to the new regulations, the benchmarking study is a required component of the local transfer pricing documentation (for some taxpayers in may trigger additional obligation - comparing to last years - concerning preparation of the benchmarking study for transaction with related parties).

Group transfer pricing documentation is drafted by entities belonging to a group of related parties, for which:

- a consolidated financial statement is drafted,
- consolidated revenue in the past fiscal year exceeded the amount of PLN 200,000,000 or its equivalent.

Group transfer pricing documentation may be drafted by a related entity obliged to enclose group transfer pricing documentation or another entity belonging to the group of related parties, also in English.

Low added value services. National regulations now include the definition of low added value services. Pursuant to the new provisions – if the remuneration for these services is not more than 5% of costs in the case of acquisition and not less than 5% in the case of providing services, authorities will resign from determining the markup. The Act includes a catalogue of low added value services.

Controlled transactions related to loans. Pursuant to new regulations, tax authorities will resign from determining the interest rate in case of a controlled transaction of loan under the condition that:

- the interest rate will be determined based on the basic interest rate and the markup, provided for in the notice of the Minister of Finance,
- no additional fees related to servicing loans are expected,
- they were granted for not longer than 5 years,

- the total of loans granted and loans received from related entities (the level calculated separately) is currently not more than PLN 20,000,000.

Transfer pricing adjustments. The new regulations deal with transfer pricing adjustments resulting from differences between the assumed profitability and the actual state. According to the new regulations, a transfer pricing adjustment will constitute respectively revenue or a tax deductible expense and will be recognized in the year concerned. Additionally, at the moment of making the adjustment, the taxpayer must have a statement of the related entity confirming that the entity made the transfer pricing adjustment at the same level. Moreover, the taxpayer is **obliged to make the adjustment in a very short time** – TP adjustments must take place in the annual tax settlement for the fiscal year when adjustments apply, i.e. within 3 months after the end of the given fiscal tax year.

Other changes. The new regulations on transfer pricing include a clarification of the definition of related entities. Additionally, the term to submit a statement confirming that the transfer pricing documentation has been drafted and to submit information on the transactions conducted with related entities and the transfer prices applied was extended until the 9th month following the end of the fiscal year. The term to draft group transfer pricing documentation is 12 months following the end of the fiscal year. Additionally, detailed tax pricing reporting in the electronic form (TP-R) has been introduced. The new regulations include also some exemptions from the obligation to prepare TP documentation.

Please note that according to transitional provisions, taxpayer may decide to prepare TP documentation for 2018 or according to the old regulations (valid until the end of 2018) or according to the new regulations, which came into force at the beginning of 2019. However, the choice of regulations must apply to all documented transactions, events carried out with related entities.

WITHHOLDING TAX

New tax regulations introduce significant changes in collecting withholding tax. Main changes consist in **the obligation to collect** lump-sum income tax on receivables from **participation in the income of legal entities, interest, royalties and immaterial services** when **the amount of payments to the same entity (the taxpayer) will exceed PLN 2 million within a fiscal year** (below that amount, the previous rules shall apply).

Opinion on exemption. It will be possible to stay away from the obligation to collect the withholding tax (after the PLN 2 million limit has been exceeded) if the tax remitter (the entity making the payment) obtains an “opinion on exemption application.”

The opinion is issued by a tax office upon the taxpayer’s (or the tax remitter’s) request within 6 months from submitting the application. The opinion costs PLN 2,000. The opinion allows to apply **exemptions provided for in the Polish tax regulations** regarding the receivables from participation in the income of legal entities, interest and royalties paid to the shareholder (dividend) or related entities (interest, royalties) adhering to stipulated conditions, included the minimum level of shares provided for in the regulations, the date of ownership and the requirement to determine the beneficial owner of receivables. The exemption application opinion **will not apply to the provisions of international agreements**. As a rule, the opinion expires within 36 months after the day it was issued.

Tax remitter's statement. Having exceeded the limit of PLN 2 million, the tax remitter will still be able to apply tax reduction or tax exemption under the Polish law or international agreements, provided that, before making a payment, the tax remitter submits a statement, in which he states that:

- the tax remitter is in possession of documentation required for the application of an exemption or the possibility not to remit the WHT,
- the tax remitter has verified, with due diligence, whether the conditions to apply

a lower WHT rate or exemption were met, and are not aware of circumstances that would disallow application of lower WHT rates or exemption.

At the moment of submitting the statement, the tax remitter should collect and have all the documents (such as the taxpayer's certificate of residence) required by the tax regulations, including international agreements. By submitting the statement, the tax remitter takes full responsibility for meeting all legal requirements. The statement shall be submitted by the head of the tax remitter's entity in line with the Accounting Act (not later than on the day of payment). It is impossible to have the statement submitted by a proxy. The statement should be made only in the electronic form. The statement will have a time-limited effect, namely until the end of the second month following the month when the statement was filed. Upon the expiry date, the taxpayer will be entitled to submit another statement.

If the "tax remitter's statement" regarding the withholding tax was not true, or when the tax remitter has not performed verification, or the verification performed by the taxpayer was not adequate to the nature and scale of the business activities, **the tax remitter shall be responsible** for the uncollected or understated withholding tax as well as for the **"additional tax liability."**

Tax refund of paid remuneration. If there is no "opinion on exemption application" or the "tax remitter's statement", the taxpayer or tax remitter may request a refund of paid withholding tax at a tax office. The request should be submitted together with:

- certificate of tax residence,
- wire transfer confirmation,
- documentation regarding payment of remuneration,
- taxpayer's statement regarding the fulfilment of the conditions for exemption,
- statement on the arising of the tax obligation, as well as a justified statement of the beneficial ownership status (receives remuneration for their own benefit);
- justified statement of the applicant that the taxpayer carries out real economic activity in the taxpayer's country of residence,
- contractual arrangements, under which the tax remitter paid the tax from their own funds and incurred the economic burden of the tax,
- statement on the truthfulness of the facts presented in the request.

In principle, the refund should be made within six months from the day when the request was submitted. The request for overpayment can be only submitted electronically.

Beneficial owner: The amended regulations clarify the definition of the beneficial owner of payment. The previous definition of the beneficial owner was supplemented with new premises: a beneficial owner bears the economic risk related to the loss of that payment or its part and runs real business activity in the country of residence, if payments are acquired in relation to the business activities. Determining, whether the foreign recipient of the payment is the beneficial owner will require the Polish tax remitter to analyse additional factual circumstances.

The provisions obliging the tax remitters to remit the WHT for payments exceeding PLN 2 million are excluded for the period between January and end of June 2019, based on the directive of the Finance Minister. The exclusion relates to the license fees, interest and dividends, provided that there exists legal basis for the exchanges of tax information with the country of the foreign taxpayer's residence or management.

SETTING EXPENSES ON PASSENGER CARS USED FOR BUSINESS PURPOSE

The amended tax regulations change the rules on settling expenses on passenger cars. Pursuant to the regulations applicable as of January 2019, depreciation write-offs for passenger cars cannot be included in tax-deductible expenses, in the part exceeding the value of the car:

- PLN 225,000 - in case of an electric passenger vehicle,

- PLN 150,000 - in case of other vehicles,

Additionally, car insurance premiums in the amount exceeding their part proportional to the ratio of the amount of PLN 150,000 to the value of the car for insurance purposes cannot be included in the tax-deductible expenses.

Also fees for operating lease, rental and leasing agreement or other agreements of similar character, exceeding the proportion in which the amount of PLN 150,000 (PLN 225,000 for an electric car) remains to the overall value of such a car should be excluded from the tax deductible costs.

In the case of vehicles used for the business operation purposes only (a detailed mileage logbook will be required), the taxpayer will still have the right to include 100% of incurred expenses (e.g. on fuel, maintenance and repairs) in tax-deductible costs. In the case of passenger vehicles **for business and personal use, 75% of incurred expenses will be tax deductible.**

If the fees, including rent, under the operating lease, rental and leasing agreement or other agreements of similar character were calculated so that they include expenses on using a passenger's vehicle, the above rule will apply to the part of the fee that covers the expenses on using a passenger vehicle.

TAX ON INCOME FROM REAL ESTATE

The regulations applicable as of January 2019 provide for extension of the subject of taxation. **Every fixed asset that is a building**, located in Poland, which has been leased out in whole or in part pursuant to a tenancy agreement, a lease agreement, or a similar contract will be subject to taxation. Only residential buildings put into service in accordance with central or local government's social housing programmes will be exempted from taxation.

Pursuant to the amended regulations, the tax basis shall be **the total of the initial values of all buildings** as determined by the taxpayer on the first day of the month, **less the tax allowance of PLN 10 million**. The revenue (for tax purposes) is not determined when the total share of leased space in the total floorspace area does not exceed 5% of its usable area.

The amount of tax paid on revenue from buildings (tax rate amounts to 0,035% monthly) is deducted by taxpayers from the advance payment of the income tax. The paid and not deducted tax on revenue from buildings for a fiscal year can be deducted from the income tax for a given fiscal year. The deduction applies to the annual settlement.

The amount of the tax on revenue from buildings which has not been deducted is subject to a refund upon the taxpayer's request, provided that the tax authority does not disclose any irregularities in the amount of the tax liability or loss in the submitted tax settlement, and in the tax on revenue from buildings, especially if the debt financing costs related to the acquisition or construction of the building, as well as other revenues and costs, were determined according to arm's length rule.

PREFERENTIAL 9% CIT RATE

The amended act provides for **the lowered CIT rate of 9%** of the tax base of revenue (income) other than that from capital gains for taxpayers, whose revenue achieved within a fiscal year did not exceed the equivalent of **EUR 1,200,000** expressed in zlotys according to the average euro conversion rate announced by the National Bank of Poland on the first working day of the fiscal year. The rate applies to the so-called "small taxpayers" and entrepreneurs starting their business (except of taxpayers created as a result of restructuring).

EQUITY FINANCING INCLUDED IN TAX DEDUCTIBLE EXPENSES

The new tax regulations provide for a possibility to include hypothetical equity financing costs in tax-deductible expenses. Pursuant to the new regulations, tax-deductible expenses are construed as the amount equal to the product of the reference rate of the National Bank of Poland effective as of the last working day of the year preceding the fiscal year plus one percentage point, and one of the following amounts:

	<ul style="list-style-type: none"> ■ contribution to the company in accordance with the principles and under the procedure specified in separate regulations, or ■ income transferred to the company's reserve or supplementary capital. <p>Recognized tax-deductible expenses cannot exceed the amount of PLN 250,000 in a fiscal year. The new regulations will apply for the first time to the fiscal year starting after December 31, 2019.</p>
<p>NEW RULES OF SETTLING TAX LOSS</p>	<p>Pursuant to the amended regulations, the taxpayer may use the loss from a revenue source incurred in a fiscal year to:</p> <ul style="list-style-type: none"> ■ reduce the income obtained from that source within the next subsequent five fiscal years, provided that the amount of the reduction in any of these years does not exceed 50% of the incurred loss, or ■ apply a one-time deduction of income from this source in one of five coming subsequent tax years up to PLN 5,000,000; the amount of loss which has not been deducted is to be settled within the remaining years of that five-year period; however, the amount of the reduction in any of these years cannot exceed 50% of the loss. <p>The new regulations shall apply to losses generated in the tax year starting after December 31, 2018.</p>
<p>EXIT TAX - TAX ON UNREALIZED PROFITS</p>	<p>The amended regulations introduce completely new regulations with respect to tax on income from unrealized profits. They apply in case of a taxpayer leaving the country of residence or transferring specified company assets abroad. These regulations are the result of implementation of the provisions of a Directive of the EU, aimed at preventing tax avoidance practices (the ATA directive). The Polish regulations introduce relevant rules for both corporate income tax taxpayers as well as personal income tax taxpayers (the latter is not required as per the EU directive).</p> <p>The tax on income from unrealized profits is 19% of the tax base. The following are subject to the tax on income from unrealized profits:</p> <ul style="list-style-type: none"> ■ transfer of an asset outside of the territory of the Republic of Poland, as a result of which the Republic of Poland shall, in whole or in part, lose the taxing right to income from selling that asset, where the transferred asset shall continue to be owned by the same taxpayer, ■ change of the tax residency by a taxpayer subject to taxation on his/her whole revenue (unlimited tax liability) in the Republic of Poland, as a result of which the Republic of Poland shall, in whole or in part, lose the taxing right to income from selling the asset owned by the taxpayer, who transfer its registered office or its effective management to another state. <p>Income from unrealized profits comprises of the excess of the market value of the asset, including that resulting from the change of the tax residency determined as of the date of transfer, or as of the date of the change of tax residency, over the tax value of the asset. The tax base is the total of income from unrealized profits determined for individual assets. In case of a transfer of the enterprise or its organized part, the income from unrealized profits applies to the entire enterprise (or its organized part).</p> <p>The tax value shall be construed as the amount that has not been included in tax-deductible expenses in any form, it would be recognized by the taxpayer as tax-deductible expense if that asset had been sold as such.</p> <p>The regulations also define tax exemptions from taxation on income from unrealized profits for assets temporarily transferred outside the territory of Poland, exemptions from taxation in some cases (as a rule assets for business use by employees) or the possibility to pay the tax in instalments.</p>

	<p>With respect to taxation of personal income taxpayers, two tax rates have been provided for (19% and 3%) as well as a tax exemption when the aggregate market value of transferred assets does not exceed PLN 4,000,000.</p>
<p>INCOME GENERATED BY INTELLECTUAL PROPERTY RIGHTS - IP BOX</p>	<p>Tax on income from qualifying intellectual property rights. The income obtained from the qualifying IP created, developed or improved by taxpayers as part of their R&D activity, will be subject to 5% CIT rate. Intellectual property rights, as defined by the act, include:</p> <ul style="list-style-type: none"> ■ right to an invention (patent), ■ protection right for the utility model, ■ right from the registration of an industrial design, ■ right from the registration of an integrated circuit topography, ■ additional protection right for a patent for medicinal product or plant protection product, ■ right from registration of medicinal or veterinary product, ■ exclusive right, referred to in the Act on the protection of plant varieties, ■ rights to computer program. <p>The regulations include a definition of income (loss) from qualifying intellectual property rights. The final amount of income from the qualified IP right will be determined using the formula included in the Act.</p>
<p>ADDITIONAL TAX LIABILITY IN THE TAX ORDINANCE ACT</p>	<p>The amendment of the Tax Ordinance Act introduces the “additional tax liability.” It is a measure similar to the one currently functioning with respect to VAT, although the provisions of the Tax Ordinance Act introduce a penal sanction related to tax avoidance, application of measures limiting contractual benefits, transfer pricing rules.</p> <p>Pursuant to amended regulations, the tax authority imposes the additional tax liability:</p> <ul style="list-style-type: none"> ■ by applying the provision on general anti-avoidance rule, ■ by applying measures limiting contractual benefits, ■ on the basis of the specific anti-avoidance rules, provided for in regulation on PIT and CIT law, ■ pursuant to transfer pricing regulations, ■ if the “tax remitter’s statement” regarding the withholding tax was not true, or when the tax remitter has not performed verification, or the verification performed by the taxpayer was not adequate to the nature and scale of the business activities. <p>The additional tax liability is 10% or 40% of the amount of the tax advantage. In some cases, the rate may be doubled or even tripled. The additional tax liability does not apply to VAT, where this measure is governed by separate rules.</p> <p>According to the regulations, the tax authority may refrain from imposing the additional tax liability if, based on relevant facts and circumstances, it can be established that at the moment of performing actions indicated in the decision, the taxpayer wrongly believed that the tax advantage he obtained in the given circumstances was in line with the scope and aim of the tax law or its regulations (“good faith”). Whether the taxpayer acts in good faith can be indicated in particular by the fact that he does not conduct business activity or conducts it on a small scale, wherefore it can be reasonably expected that he would use professional advice on tax results regarding actions which the decision concerns.</p> <p>The additional tax liability will not be used by the tax authorities against “a person who is liable for a tax offense or a tax crime.”</p>
<p>IP ADDRESSES IN E-BANKING</p>	<p>The current regulations of the Tax Ordinance Act in the chapter regarding combating the use of the financial sector for tax frauds have been extended. The Head of the National Revenue Administration (KAS) may request the bank to additionally provide the IP addresses which:</p>

- were used to log in to e-banking services, indicating the identifier used to log in and the date and time of this loggings,
- were used to place orders to execute the transaction, indicating the identifier used to place the order and the date and time of this order,

OBLIGATION TO REPORT TAX SCHEMES

The new regulations, introducing the obligation to report tax schemes, are the result of the implementation in the Polish law of the Council Directive (EU) 2018/822 regarding the mandatory disclosure rules for cross-border transactions.

Pursuant to the new regulations, tax advisors, legal counsels, attorneys at law and other experts will have to inform the Head of KAS about tax schemes. Additionally, they will be obliged to introduce relevant internal procedures with respect to the MDR. In some cases (e.g. when a tax advisor invokes the obligation of professional secrecy) the obligation to inform the Head of KAS bears the customer (the entity where the tax scheme is implemented).

The Act includes a detailed definition and hallmarks of a tax scheme. In principle, **a tax scheme** involves a specific plan of actions, whose main goal is not to achieve **an economic goal**, but only to obtain **a tax advantage**.

The examples of a tax scheme are as follows: establishing a limited joint-stock partnership, donation between companies forming a capital group, using differences in tax law in different countries, establishing trusts or foundations, structures involving creation of artificial holding companies, transfer of income to countries with lower tax burden (tax havens), withdrawal of a trademark (rebranding), abuse of the dividend exemption, purchasing a high-value trademark from a foreign entity.

The main reason to introduce mandatory disclosure rules is to discourage taxpayers and their advisors from using tax planning schemes.

Information on a tax scheme is to be reported through a computerized system referred to as the MDR systems, kept by the Head of KAS, using electronic means of communication.

OTHER CHANGES IN THE TAX LAW

Other changes in the tax regulations applicable as of January 2019 relate to i.a.:

- purchase of the debt portfolio,
- alternative taxation of issuing Eurobonds,
- taxation of cryptocurrencies,
- taxation of income of a controlled foreign company - CFC.

CONTACT

This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of presented information, we recommend obtaining a binding opinion of TPA Poland experts.



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