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ATAD II Directive aimed at hybrid mismatches is to be implemented in Poland from 1 April 2020

New regulations implementing the ATAD II Directive and aimed at counteracting the effects of hybrid mismatches are to be introduced in Poland. The draft bill is currently under parliamentary works. Taxpayers being part of international groups or performing transactions with foreign entities should analyze the structure in which they conduct their business to determine whether they qualify for anti-hybrid measures.

General overview	<ul style="list-style-type: none"> A new chapter will be added to the CIT Act to counteract the tax effects of hybrid mismatches. Such effects may comprise: <ul style="list-style-type: none"> deduction without inclusion – a deduction of a payment from the tax base in one jurisdiction without the corresponding inclusion of that payment in the tax base of the taxpayer in another jurisdiction double deduction – deduction of the same payment from the tax base in more than one jurisdiction.
Hybrid mismatches	<ul style="list-style-type: none"> Hybrid mismatches may arise in the following situations: <ul style="list-style-type: none"> hybrid entities mismatch - occurs when a particular entity is treated as tax-transparent in one jurisdiction and as non-transparent in another jurisdiction financial instruments mismatch (including transactions involving such instruments) - takes place when two jurisdictions treat a financial instrument (payment) differently for tax purposes disregarded permanent establishment is in place – it means that a permanent establishment is disregarded under the law of the branch jurisdiction.
Tax implications	<ul style="list-style-type: none"> According to new regulations, a taxpayer will not be entitled to deduct from its tax base any costs that are subject to double deduction or deduction without inclusion. The consequences will apply when deduction without limitation and double deduction are made by related parties or under a hybrid mismatch. In case a hybrid mismatch concerns the income of a disregarded permanent establishment of a taxpayer who is a Polish tax resident, the income of the taxpayer should include the income that would be allocated to the permanent establishment if the hybrid mismatch had not occurred. The rule will not apply if based on a relevant double taxation convention concluded with a state other than a member state of the EU there is an obligation to exempt such income in Poland.

Dual tax residencies	<ul style="list-style-type: none"> ■ Additionally, the new regulations address the tax consequences arising for the taxpayers having dual tax residence. ■ In particular, a taxpayer being recognized as a Polish tax resident will have no right to recognize tax-deductible costs or to reduce its income by losses if such costs or losses are deductible in at least two states, in which the taxpayer is treated as a tax resident or do not correspond to double-counted income. ■ The rule will not apply if the taxpayer has been recognized as a Polish tax resident under a double taxation convention concluded between Poland and another EU member state.
Entry into force and recommended actions	<ul style="list-style-type: none"> ■ The new regulations are preliminarily scheduled to enter into force on 1 April 2020. ■ As the anti-hybrid measures may affect the tax position of many taxpayers, we encourage companies that are part of international groups or undertake cross-border transactions to verify whether the planned provisions could apply to them.
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