

September 2020

## DRAFT AMENDMENT TO CIT ACT – changes in the area of transfer pricing

The latest draft of amendments to the CIT Act, which would come into force starting from January 2021, provides, among other things, for the introduction of changes to transfer pricing regulations. The proposed changes are aimed at:

- tightening the tax system and preventing the transfer of income to so-called tax havens, by
  - extending the range of transactions to be verified in terms of compliance with the arm's length principle,
  - extending the obligation to document transactions with entities from so-called tax havens,
  - extending the scope of elements required in local documentation for transactions with entities from tax havens (including the so-called benefit test);
- reducing the administrative burden during the period or for the period during which the COVID-19 epidemic occurred, related to:
  - making transfer pricing adjustments
  - drawing up of local transfer pricing documentation for domestic transactions,
  - signing statements on the preparation of local transfer pricing documentation.

Similar changes have been proposed with respect to the PIT Act.

### Important issues related to the proposed changes:

<b>Extension of the range of transactions with "tax havens" subject to verification</b>	<p>The proposed provision of Article 11i of the CIT Act stipulates the possibility of verifying the arm's length price level in transactions:</p> <ul style="list-style-type: none"> <li>■ other than controlled transactions with an entity having its residence, registered office or management in a so-called tax haven, and</li> <li>■ other than controlled transactions, if the beneficial owner has its residence, registered office or management in a so-called tax haven.</li> </ul>
<b>Extension of the obligation to document transactions with "tax havens"</b>	<ul style="list-style-type: none"> <li>■ As per the planned changes, taxpayers and companies that are not legal entities will also be required to prepare local transfer pricing documentation for transactions (both cost and revenue):                             <ul style="list-style-type: none"> <li>■ other than controlled transactions with an entity having its residence, registered office or management in a so-called tax haven, or</li> <li>■ other than controlled transactions, if the beneficial owner has its residence, registered office or management in a so-called tax haven if the transaction value for the tax year exceeds PLN 100,000.</li> </ul> </li> <li>■ As a result of the proposed amendment, not only transactions in which a Polish entity makes payments to an entity in a "tax haven" would be subject to documentation obligations (as is currently the case), but also transactions in which a payment from such an entity is received.</li> </ul>

	<ul style="list-style-type: none"> <li>■ The new regulations also specify that the documentation threshold for transactions with entities from "tax havens" is to be PLN 100,000 regardless of the type of transaction.</li> </ul>
<b>Extension of the range elements required in local documentation for transactions with "tax havens"</b>	Local transfer pricing documentation drawn up for transactions with entities from "tax havens", in addition to the basic elements as in the case of other transactions, will have to include the economic justification of the transaction (description of the reasons for concluding it) and a description of expected economic benefits (the so-called "benefit test"), including tax-wise benefits.
<b>Transfer pricing adjustment</b>	<ul style="list-style-type: none"> <li>■ The proposed legislation provides for the introduction of an exemption from the obligation for a taxpayer making a transfer pricing adjustment to have a statement from a related entity that the related entity has made a transfer pricing adjustment at the same amount as the taxpayer. Such a statement is currently required when making a transfer pricing adjustment that reduces revenue or increases tax deductible costs (the so-called minus adjustment).</li> <li>■ The exemption shall apply only to adjustments made for a tax year or at a time when the epidemic emergency or the state of epidemic declared in connection with COVID-19 was in force across the territory of the Republic of Poland.</li> </ul>
<b>Additional exemption from the obligation to draw up local documentation for domestic transactions</b>	<ul style="list-style-type: none"> <li>■ Pursuant to the regulations in force today, a domestic transaction between related entities may benefit from an exemption from the obligation to prepare local transfer pricing documentation, provided that none of the parties to such a transaction has suffered a tax loss in the documented tax year.</li> <li>■ The draft proposes that this condition should not apply in a tax year starting after 31 December 2019, in which the epidemic emergency or the state of epidemic declared in connection with COVID-19 was in force across the territory of the Republic of Poland.</li> <li>■ The exemption from the obligation to draw up local transfer pricing documentation would apply to related entities carrying out domestic transactions which were affected by the negative effects of the economic crisis triggered by the COVID-19 pandemic, i.e. which received at least 50% less operating revenues this year than those received in the corresponding period immediately preceding that year.</li> </ul>
<b>Streamlining of signing a statement on having prepared local transfer pricing</b>	<ul style="list-style-type: none"> <li>■ Pursuant to the regulations currently in force, the statement on having prepared the local transfer pricing documentation must be signed by the head of the entity, which in the case of companies, in practice, means the entire Management Board.</li> <li>■ According to the draft, the statement submitted for the tax year or at the moment when the epidemic emergency or the state of epidemic declared in connection with COVID-19 was in force across the territory of the Republic of Poland, could be signed by a person authorised to represent the entity. However, it would still not be acceptable to have a proxy submit the statement.</li> </ul>

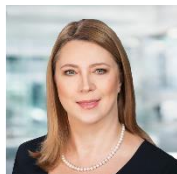
## Draft Act

The draft Act amending the Personal Income Tax Act, the Corporate Income Tax Act, the Lump Sum Income Tax Act on Certain Incomes Earned by Natural Persons and Certain Other Acts of 15 September 2020 is available under the following link:

<https://legislacja.rcl.gov.pl/projekt/12338256/katalog/12719153#12719153>

## CONTACT

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



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