

Changes in taxes 2021

From the beginning of 2021, the Polish tax system undergoes a few important changes. Apart from the revolution in the taxing of limited partnerships, which will have an adverse impact on the development of Polish family companies, there appears so called “Estonian” corporate income tax (CIT) that is to improve the investment level of domestic entrepreneurs. The legislator introduces new tax and reporting obligations for real estate companies. For the first time in the Polish tax law, it is required to prepare a report on the implementation of tax strategy.

REAL ESTATE COMPANY

From 2021, the legislator introduces to the Polish tax regulations a new type of company, that is the real estate company. As a rule, the real estate company is an entity in which the value of real estate located in Poland represents at least 50% of the balance sheet value of assets, and whose revenue from lease represents at least 60% of total revenue.

The national regulations are also supplemented by a rule stating that income gained in the territory of Poland by non-residents also includes income earned from the transfer of ownership of shares, general rights and obligations, titles of participation or similar interests in a real estate company. According to the new regulations, the obligation to clear the income tax on the disposal of shares in the so-called real estate companies will be transferred from the seller to the real estate company. In the opinion of the Ministry of Finance, this should help make the collection of income tax more effective.

The tax withholding is 19% of income from the transaction, and if the real estate company does not know the transaction amount, then 19% of the market value of its shares. The taxpayer must pay the withholding agent (real estate company) the amount of withholding before the statutory date of its payment.

A real estate company which does not have its registered office or management in the territory of the Republic of Poland must appoint a tax representative. This obligation does not apply to companies subject to income tax in a Member State of the European Union.

Both the real estate companies and the taxpayers being their direct or indirect owners (with an at least 5% holding) must provide the Head of the National Revenue Administration (in electronic form, within 3 months after the end of the real estate company's tax year) with information on its direct and indirect owners and on the shares held.

Another new regulation is that the Minister of Finance shall publish the individual data of the real estate company (name, income, amount of income tax) contained in its annual tax statement.

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| LIMITED PARTNERSHIPS TO PAY CIT | <p>As from 2021, limited partnerships become payers of corporate income tax (CIT). The new regulations imply double taxation of profit of a limited partnership, that is with CIT at the partnership level and then with personal income tax (PIT) or CIT (depending on the partner status) at the partners level.</p> <p>Until the end of 2020, limited partnerships were transparent in terms of tax, i.e. the partnership itself was not a payer of income tax. The payers were its partners, which meant that tax was imposed on the income earned from the interest in a limited partnership only at the partners level.</p> <p>Under the amending law, a limited partnership may decide that it will become a CIT payer only as from May 2021.</p> |
| GENERAL PARTNERSHIPS TO PAY CIT | <p>A general partnership will become a payer of corporate income tax (CIT) only if its partners are not natural persons and if the partnership fails to submit a relevant declaration.</p> <p>The tax will not apply to such general partnerships in which the identity of all partners being payers of income tax (natural or legal persons) is disclosed to the competent tax office. The regulations specify the scope and deadline for submitting the information on taxpayers who directly or indirectly participate in the partnership's profit.</p> |
| LUMP-SUM TAX ON COMPANY INCOME – “ESTONIAN” CIT | <p>Lump-sum tax on company income, called “Estonian CIT”, is an optional system for collecting corporate income tax, which is in force in Poland from the beginning of 2021. It is assumed that the main benefit of that system is that the moment of paying the income tax is postponed to the moment when the company distributes its profit. In the Estonian CIT system, a company does not pay income tax until the moment when its profit is paid out to shareholders.</p> <p>According to tax regulations, a taxpayer subject to the Estonian CIT must keep account books and prepare financial statements based on accounting regulations in a manner to allow proper calculation of tax. The regulations specifically define the entities which may apply the lump-sum tax on company income (the requirements provide for the revenue limit of 100 million, the limit of passive revenue, or that the business must be carried on as a limited-liability or joint-stock company), and contain a catalogue of circumstances which cause a loss of the right to the lump-sum tax.</p> <p>The chosen taxation with the Estonian CIT applies to the taxpayer for four tax years, with the option to continue in the following periods. Within that period, the taxpayer is required to incur specific direct capital expenditure in a specified amount.</p> <p>The rate of the lump-sum tax is 15% for small taxpayers and 25% for other taxpayers. That rate is reduced by 5% if the company makes appropriate expenditure for investment purposes.</p> |
| INVESTMENT FUND | <p>Investment fund is a special solution aimed to encourage taxpayers to increase their level of investment. Its essence is to accelerate the moment of recognising the cost, which in normal circumstances would arise only upon depreciation or the disposal of a fixed asset.</p> <p>According to the new regulations, taxpayers who have met specified conditions (which are generally the same as for the lump-sum tax, the so-called Estonian CIT) may recognise as tax deductibles any write-offs made on a fund separated in the reserve capital, created for investment purposes, if all of the following conditions are fulfilled:</p> |



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- the fund is created from a profit gained for the year preceding the tax year;
- the cash equivalent of the value of the write-off made for the fund will be paid, no later than on the date of the write-off, to a bank account separated only for that purpose;
- the cash does not come from a loan (credit), subsidy, grant, additional payments, or any other form of financial support;
- the cash gathered in the fund in a given tax year will be spent on specified investment purposes no later than in the tax year following the year of the write-off (with the option to extend the period under certain conditions).

At the same time, tax deductibles do not include expenses incurred on the acquisition or production of fixed assets or write-offs on the consumption of fixed assets, to the extent of their value that was financed from the resources held in the Investment Fund.

TAX STRATEGY REPORT

According to the regulations which entered into force in 2021, CIT payers with a revenue exceeding EUR 50 million as well as tax capital groups (regardless of their revenues) must prepare and publish the information on their implemented tax strategy for the tax year.

The tax strategy report should include (with due regard to the nature and scale of business), without limitation:

- description of the processes and procedures ensuring proper performance of tax duties,
- description of the approach to the implementation of tax duties, including the number of submitted MDRs (mandatory tax disclosures) divided into taxes,
- information on related-party transactions that exceed 5% of the balance sheet total,
- information on any restructuring planned or implemented,
- information on any applications for the issue of ORD-IN, WIS, WIA or a general interpretation,
- information on any tax clearance made in tax heavens, excluding any information being trade, production or professional secret.

The tax strategy report is published in Polish, on the website (and if there is no website, then on the website of a related party), until the end of the 12th month after the expiry of the relevant tax year. Within that period, it is also required to notify the website address to the head of the tax office. Failure to comply is subject to a penalty of up to PLN 250,000. The new requirement does not apply to entities which have made a cooperation agreement with tax authorities (under the Tax Ordinance Act).

OTHER CHANGES

Reduced CIT rate. The working limit of revenue, which enables the application of 9% rate for income from an operating source (i.e. other than “capital gains”) is raised from EUR 1,200,000 to EUR 2,000,000.

Minimum tax on buildings. The exemption from minimum tax (the tax on revenue from buildings) is extended and covers the following periods:

- revenues determined for the period from 01/03/2020 to 31/12/2020,
- revenues determined for the period from 01/01/2021 to the end of the month when the state of COVID epidemics is lifted.

Loss clearance in the context of COVID-19. Taxpayers who, due to the COVID19:

- incurred a loss in a tax year started before 01/01/2020 but overlapping 2020, or in a tax year started in 2020, and
 - whose revenue in the said tax year is lower than 50% of their revenue in the preceding year,
- may reduce their income for the preceding tax year by that loss (but no more than PLN 5 million) on a one-off basis. This gives the option to clear the loss backwards.



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Fulfilment of a non-pecuniary performance. The regulations additionally specify that the taxpayer gains revenue if he fulfils a non-pecuniary performance to settle a liability that arose from the distribution of assets of a liquidated company between its shareholders.

Transfer pricing documentation. Certain regulations on transactions with entities seated in tax heavens have been modified. There is a new obligation to prepare documentation for transactions worth over PLN 500,000 in a given year, made with a certain counterparty, if the beneficial owner comes from a tax heaven (even if the counterparty is not seated in a tax heaven).

Restriction of PIT amnesty relief. As from 2021, there is a tax-free amount for persons active overseas. As long as the income earned outside of Poland does not exceed PLN 8,000, it will be cleared as before. The amendment limits the relief to PLN 1,360. This imposes tax on those Polish residents who, for example, were not required to pay tax on foreign income in Poland.

Commercial tax. New regulations will be introduced in 2021 regarding a new tax on retail sales. It is imposed on entities involved in retail sales to individual consumers (so generally commercial chains). The tax is charged on turnover. It applies to any surplus of revenue over PLN 17 million per month. Two rates are provided: 0.8% for a surplus of up to PLN 170 million, and 1.4% for higher amounts. The tax is payable until the 25th day of the following month. It does not apply to, for example, the sales of electricity, natural gas, coal, fuel oils, or medicines.

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