

## Real estate company

At the beginning of 2021, the definition of a real estate company was introduced into the Polish tax system. The regulations impose a number of new tax, evidence and reporting obligations on a real estate company. The end of 2021 therefore means the necessity to complete them. The most important of the new reporting obligations are presented below.

### DEFINITION OF A REAL ESTATE COMPANY

A real estate company is an entity other than a natural person, obliged to prepare a balance sheet on the basis of accounting regulations, in which:

- **entity commencing business** – as at the first day of the tax year, and if the real estate company is not a taxpayer of income tax – as at the first day of the financial year, **at least 50% of the market value of assets**, directly or indirectly, was the market value of real estate located in the territory of the Republic of Poland, or rights to such properties and the market value of these properties **exceeded PLN 10 million** or its equivalent,
- **an existing entity** – as at the last day of the year preceding the tax year, and if the real estate company is not a taxpayer of income tax – as at the last day of the year preceding the financial year, at least 50% of the balance sheet value of assets, directly or indirectly, was the balance sheet value of real estate located in the territory of Poland or rights to such properties and the balance sheet value of these properties exceeded PLN 10 million or the equivalent of this amount and in the year preceding the tax year or the financial year, respectively, tax revenues, and if the real estate company is not a taxpayer of income tax – revenues included in the net financial result, from rental, sublet, lease, sub-lease, leasing and other contracts of a similar nature or from the transfer of ownership, the subject of which are real estate or rights to real estate, and from shares in other real estate companies, accounted for at least 60% of total tax revenues or revenue recognized in profit or loss.

Criterion	Entity setting up a business	Existing entity
<b>Moment of verification</b>	balance sheet <b>as at the first day of</b> the fiscal (financial) year	balance sheet <b>as at the last day of</b> the year preceding the tax (financial) year
<b>Share of real estate in assets</b>	at least <b>50%</b> of the market value of the assets was, directly or indirectly, the market value of real estate located in the territory of the Republic of Poland or rights to such real estate, and	at least 50% of the carrying amount of the assets was, directly or indirectly, attributable to real estate located in the territory of the Republic of Poland or rights to such real estate, and
<b>Value of real estate</b>	<b>the market value of these properties exceeded PLN 10 million</b> or an equivalent amount, and	<b>the carrying amount of those properties exceeded PLN 10 million</b> or an equivalent amount, and
<b>Share of property income in total income</b>	n/a	in the year preceding the tax (financial) year, tax revenues from lease, sublease, leasing and other contracts of similar nature or from transfer of ownership, the subject of which is real estate or rights to real estate and from shares in other real estate companies, constituted at least <b>60%</b> of total revenues

**ATTENTION!** An entity that is not a Polish tax resident may also meet the definition of a real estate company.

## A REAL ESTATE COMPANY AS A TAX PAYER

Pursuant to the new regulations, the obligation to settle the tax on income from the sale of shares in real estate companies has been transferred from the seller to the real estate company.

Pursuant to the regulations, a real estate company acts as a remitter in the event that its shares (stocks), all rights and obligations, participation units or rights of a similar nature are sold if:

- the party making the sale is **an entity not having its registered office or management board** in the territory of Poland, and
- the subject of the sale transaction is/are:
  - shares (stocks), giving at least 5% of the voting rights in the real estate company or
  - all rights and obligations giving at least 5% of the right to participate in the profit of a real estate company that is not a legal person, or
  - at least 5% of the total number of participation units or rights to of a similar nature in a real estate company.

The tax advance is 19% of the transaction income, and if the real estate company does not know the transaction amount, it is 19% of the market value of the real estate company's shares. The taxpayer is obliged to provide the remiter (real estate company) with the amount of the advance payment before the date of its statutory payment.



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## TAX REPRESENTATIVE OF A REAL ESTATE COMPANY

A real estate company not having its registered office or management on the territory of the Republic of Poland shall be obliged to appoint a tax representative. They shall perform the duties of a tax representative on behalf and for the benefit of the real estate company. The tax representative shall be jointly and severally liable with the real estate company for the tax liability which the tax representative settles in the name and on behalf of the real estate company.

The obligation to appoint a tax representative shall not apply to real estate companies that are subject to income tax in a Member State of the European Union or in another State of the European Economic Area on all their income, regardless of where it is earned.

In the event of failure to comply with the obligation to appoint a tax representative, a real estate company shall be subject to a fine of up to PLN 1 million.

## REPORTING OBLIGATIONS ON THE OWNERSHIP STRUCTURE OF A REAL ESTATE COMPANY

An obligation has been imposed on real estate companies and their direct and indirect shareholders to provide the Head of the KAS (the National Fiscal Administration) with information on entities holding, directly or indirectly, shares, participation titles, all rights and obligations and similar rights in such a real estate company.

Entity	Real estate companies	Taxpayers holding, directly or indirectly, in a real estate company at least 5% of shares or rights of a similar nature
Scope of data	Information about the entities which directly or indirectly hold, in that real estate company, shares or other rights of a similar nature in that company, together with an indication of the number of such rights held by each of them - in the case of information provided by real estate companies,	Information about the number of shares, total rights and obligations, units or rights of a similar nature held, directly or indirectly, in that real estate company - in the case of information provided by taxpayers who are partners in real estate companies
As of	As at the last day of the property company's tax year, or, if the property company is not an income taxpayer, as at the last day of its financial year.	
Deadline	By the end of the third month following the end of the tax year of the real estate company, or, if the real estate company is not an income tax payer, by the end of the third month following the end of the financial year of the real estate company, by means of electronic communication.	

The deadline for filing the first information for real estate companies with a tax year equal to the calendar year is 31.03.2022.



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<b>INFORMATION ON THE IMPLEMENTING TAX STRATEGY</b>	<p>Real estate companies belonging to tax capital groups or having tax revenues exceeding EUR 50 million in the previous year are required to publish annual information on the implementation of tax strategies on their websites. Necessary information includes the policy of cooperation with KAS (the National Fiscal Administration), requests for interpretations or binding tariff and rate information, procedures for managing the tax function, MDR reporting scope or significant transactions (over 5% of the balance sheet total) with related entities.</p>
<b>INDIVIDUAL DATA OF TAXPAYERS</b>	<p>Real estate companies, apart from tax capital groups and entities with revenues exceeding EUR 50 million, are listed on the list of entities for which the Minister of Finance publishes individual taxpayers' data. The data provided comes from the tax return and includes:</p> <ul style="list-style-type: none"> <li>■ the company (name) and tax identification number of the taxpayer;</li> <li>■ indication of the tax year;</li> <li>■ information about amount of: <ul style="list-style-type: none"> <li>■ achieved income,</li> <li>■ tax deductible costs incurred,</li> <li>■ income earned or loss suffered,</li> <li>■ tax base,</li> <li>■ the amount of tax due.</li> </ul> </li> </ul> <p>These data are made available automatically each year by September 30 in the Public Information Bulletin on the website of the tax office.</p>
<b>REPORT ON PAYMENT DATES IN COMMERCIAL TRANSACTIONS</b>	<p>The obligation to prepare a report on payment deadlines in commercial transactions was imposed on real estate companies.</p> <p>Pursuant to the provision, the report must include:</p> <ul style="list-style-type: none"> <li>■ the value of the paid receivables and liabilities paid in the previous calendar year within a period not exceeding 30 days, from 31 to 60 days, from 61 to 120 days, exceeding 120 days – counted from the date of issuing an invoice or bill confirming the delivery of goods or performance of a service;</li> <li>■ the value of open receivables in the previous calendar year by the date specified in the contract and the percentage share of these benefits in the total value of cash benefits due to the entity in that year;</li> <li>■ the value of outstanding liabilities in the previous calendar year by the date specified in the contract and the percentage share of these benefits in the total value of cash benefits to be met by this entity in that year.</li> </ul> <p>Real estate companies will be required to submit the first report on the applicable payment deadlines for 2021 by January 31, 2022.</p> <p>A fine will be imposed on the managers of an entity that fails to submit the report on time. The imposition on entrepreneurs of the obligation to submit a report serves the purpose of detecting entities eligible for control in terms of excessive delays in fulfilling cash benefits from commercial transactions.</p> <p>In the event that, on the basis of the data disclosed in the Report, there is a justified assumption of excessive delay in the payment of cash benefits, a procedure may be initiated by the President of the Office of Competition and Consumer Protection, under which an administrative fine will be imposed on the given entity.</p>



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## POLISH DEAL. DEPRECIATION IN REAL ESTATE COMPANIES (RECOs)

In addition to a number of other tax changes provided for in the Polish Deal, the legislator plans that in the case of real estate companies, depreciation write-offs on fixed assets classified as buildings and premises (group 1 KŚT) may not be higher than the depreciation write-offs made in accordance with the accounting principles, charging the entity's financial result in this tax year. The above mentioned change may have negative consequences for taxpayers who, recognize in the balance sheet the real estate as investments and do not make depreciation write-offs for accounting purposes.

Additionally, the act stipulates that residential buildings and residential premises constituting a separate real estate are not subject to tax depreciation. This exclusion applies to all taxpayers, not only real estate companies.

It is planned that the above changes will enter into force from the beginning of 2022. Under the transitional provisions, taxpayers may, no longer than until December 31, 2022, include in tax deductible costs, depreciation write-offs on fixed assets and intangible assets that are residential buildings acquired or constructed before January 1, 2022.

## CONTACT US

**This document has been prepared for information purposes only and covers general nature. Before taking any action based on the above information, we recommend that you obtain a valid opinion of TPA experts.**



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