

## Further major amendments to the CIT Act – a draft bill

On 28 June 2022, a draft bill introducing further amendments to the CIT Act and other acts was published on the website of the Government Legislative Centre. The draft has been submitted for public consultation.

The draft bill modifies some of the solutions introduced into the Polish legal order as part of the so-called Polish Deal. Below we present the most important changes that in our opinion deserve your attention.

### Modification and postponement of the entry into force of the minimum CIT

It is planned to exempt taxpayers from the minimum tax (Article 24ca of the CIT Act) for 2022 (taxpayers with a tax year other than a calendar year will be able to apply the exemption accordingly).

From 2023, the calculation of the tax will also change:

- the profitability ratio below which the minimum CIT will be due will be increased to 2%,
- the methodology for calculating the ratio will change (i.e. exclusion from tax-deductible costs of lease payments, increases in electricity costs, exclusion of revenues and the costs directly related to them of the value of trade receivables sold to factoring entities, exclusion of excise duty),
- the taxpayer will be able to choose one of the following methods of determining the tax base:
  - 4% of income other than from capital gains, or
  - 2% of revenues + passive expenses (i.e. debt financing and intangible services) + the value of deferred tax resulting from disclosure of intangibles.
- the tax rate will continue to be 10%.

Small taxpayers, municipal companies, taxpayers providing health care services, taxpayers whose profitability in one of the last three tax years was above 2%, and taxpayers in bankruptcy or liquidation will additionally be excluded from the minimum CIT.

### Elimination of the hidden dividend

The draft provides for the repeal of the provisions on the so-called hidden dividend, which were to enter into force from January 1, 2023 and caused a lot of interpretative uncertainty.

### Changes in taxation of shifted income

The main changes in the so-called shifted income taxation are following:

- only expenses constituting tax-deductible costs incurred for the benefit of related entities not having their registered office or management board in Poland will be subject to tax,

- in order for the tax to be due:
  - at least 50% of the revenues obtained by such an entity party from related parties must constitute certain passive revenues,
  - income obtained by such an entity in connection with a given transaction will have to be subject to taxation at an effective rate lower than 14.25% (the condition of lower taxation refers directly to the revenues of such entity from a specific receivable, and not to the total activity or income of such entity),
  - this entity must transfer to another entity at least 10% of the passive revenues received (additional conditions apply)
- the provisions on the tax on shifted income will be applied accordingly to specific schemes with the participation of tax transparent companies or with foreign entities transferring revenues to other foreign entities benefiting from low taxation.

The amendments are scheduled to take effect on 1 January 2023.

#### Simplifications in the refund of tax on income from buildings

The procedure for refunding tax on revenues from buildings building income will be simplified: if the refund application is not in doubt, the refund will be made without issuing a decision.

#### Foreign Controlled Entities (CFCs)

The amendment to the regulations on foreign controlled entities (CFCs) will address:

- elimination of double taxation of CFCs when there is a cascade of dividends in holding structures,
- clarification of one of the prerequisites constituting a foreign controlled entity (i.e., the prerequisite of high profitability of the foreign entity in relation to the assets held) in case of potential disposal of assets during the year,
- clarification of the definition of a subsidiary and adding the new terms "subsidiary" and "parent" foreign controlled entity.

#### WHT

As regards the *pay&refund* mechanism, it is planned, among others, to repeal certain obligations of tax remitters (issuers and so-called technical remitters) with regard to withholding taxation of interest and discount on treasury securities (i.e. treasury bills and bonds). To this end, the exemption for non-resident taxpayers (Article 17(1)(50) of the CIT Act) has been extended to treasury bonds offered on the domestic market and treasury bills. The exemptions from the tax remitter's obligation to collect the tax have also been amended accordingly (Article 26(1aa) of the CIT Act).

The validity of the tax remitter's statement exempting the *pay&refund* mechanism will also be extended - until the end of the tax year in which the statement has been filed. The deadline for filing a supplementary statement will be moved to the end of the month following the tax year.

The changes are to apply to payments made after December 31, 2022.

#### Debt financing costs

Interpretation doubts regarding the new wording of Article 15c(1) of the CIT Act have been clarified by indicating that the debt financing costs will be excluded from tax deductible costs in the part in which the excess of debt financing exceeds the higher of the two amounts (PLN 3,000,000; 30% of tax EBITDA).

In addition, restrictions on the costs of debt financing for equity transactions (Article 16(13f) of the CIT Act) will not apply:



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	<ul style="list-style-type: none"> <li>with respect to the cost of debt financing for the acquisition or assumption of shares (stocks) or total rights and obligations in entities unrelated to the taxpayer,</li> <li>if the provider of the financing is a bank or a cooperative savings and credit union having its registered office in an EU or EEA member state.</li> </ul> <p>The amendments are to apply to debt financing costs incurred from 1 January 2022.</p>
<b>Amendment of the regulations concerning the Polish holding company (PSH)</b>	<p>Clarification of the provisions on possibility of using the holding regime by, among others:</p> <ul style="list-style-type: none"> <li>expanding the catalogue of legal forms in which a holding company may operate to include a simple joint-stock company,</li> <li>expanding the right to benefit from the CIT exemption for dividends resulting from the Parent Subsidiary Directive to include holding companies,</li> <li>clarification of the provisions on, among others, the holding of shares by a holding company in subsidiaries (1 year),</li> <li>inclusion of the possibility of taking the advantage of the exemption provided for a special economic zone or the so-called Polish Investment Zone by a domestic subsidiary within PSH,</li> <li>introduction of a 100% exemption from dividends (currently an exemption for 95% of dividends).</li> </ul>
<b>Amendment of the regulations on lump sum taxation on company income (Estonian CIT)</b>	<p>Proposed:</p> <ul style="list-style-type: none"> <li>modifications to the scope of determining income for non-business expenses when assets (e.g. passenger cars) are used for business purposes and other purposes not related to business activity,</li> <li>modifications regarding the condition for expiration of the tax liability for the so-called “preliminary adjustment” (the tax liability for the so-called “preliminary adjustment” expires in full after at least one full period of lump sum taxation, i.e. 4 tax years),</li> <li>clarification of the deadline for filing a notification on the choice of Estonian CIT taxation - before the end of the tax year adopted by the taxpayer,</li> <li>modification of the provision on the deadline for payment of tax due on income from conversion – if tax on income from conversion is paid in full, the taxpayer is obliged to pay the tax within the deadline for filing the CIT-8 return for the tax year preceding the first year of lump sum taxation,</li> <li>modifications in the deadline for payment of a lump sum on distributed profit income and income from profit to cover losses (also applies to advances on the anticipated dividend) and a lump sum on distributed net profit income,</li> <li>clarification of the provisions on the conditions for the entitlement to a lump sum tax on a corporate income with regard to expenses incurred by the taxpayer for the employment of individuals under a contract other than an employment contract.</li> </ul>
<b>OTHER CHANGES</b>	<p>Other changes proposed as part of the bill include:</p> <ul style="list-style-type: none"> <li>clarification that the provisions on the settlement of losses of companies belonging to tax capital groups apply to losses arising from 2022,</li> <li>change of the date of updating individual data of large taxpayers (Article 27b(8) of the CIT Act) by the Ministry of Finance - it will take place once a year (until 30 September) and not every quarter,</li> <li>introduction of the obligation to submit the CIT-ST information electronically,</li> </ul>



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- simplification of the rules on relief for bad debts,
- modifications to the provisions on the relief for making an initial public offering,
- changes in transfer pricing, about which we inform you in a separate alert.

The bill also introduces amendments to the PIT Act (analogous to those implemented in the CIT Act). The Tax Ordinance is also to undergo a systemic change in the obligation to submit ORD-U information.

**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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