

FURTHER AMENDMENTS TO THE CIT ACT

On 10 October 2022, a bill introducing further amendments to the CIT Act and other laws was submitted to the President for signature. The bill modifies some of the solutions introduced into the Polish legal order as part of the so-called Polish Deal. Apart from the exceptions set out in the Act, it is due to come into force on 1 January 2023, with some of the changes applying to earlier periods. Below we present the amendments that in our opinion deserve your attention.

MODIFICATION AND POSTPONEMENT OF THE ENTRY INTO FORCE OF THE MINIMUM CIT

The taxpayers will be exempt from the minimum CIT for the years 2022 and 2023 (taxpayers with a tax year other than a calendar year will be able to apply the exemption accordingly). The first calculation of the tax should be carried out in 2024.

The calculation of the profitability ratio and the tax itself will also change, among others:

- 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 the calculation of depreciation write-offs for fixed assets used under financial lease, lease payments under operating lease, 20% of the employment cost, increases in electricity, heat and gas purchase costs, revenues and the costs directly related to them of the value of trade receivables sold to factoring entities, exclusion of excise duty, fuel, emission and gas levy as well as fuel and emission tax and gaming tax),
- the taxpayer will be able to choose one of the following methods of determining the tax base:
 - (1) 3% of revenue other than from capital gains – simplified method, new solution, or
 - (2) sum of 1,5% of revenues other than from capital gains and passive expenses (i.e. debt financing and intangible services) - modification of the current solution.

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, liquidation or those subject to restructuring proceedings, factoring companies and taxpayers who have entered into a co-operation agreement with the tax authorities 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 the following conditions must be met jointly:
 - (1) at least 50% of the revenues obtained by such an entity party from related Polish parties must constitute certain passive revenues,
 - (2) income obtained by such an entity in connection with given transactions will have to be subject to taxation at a tax rate lower than 14.25% (the method of calculating the rate is indicated in the regulations),
 - (3) this entity must transfer to another entity at least 10% of the passive revenues received (additional conditions apply),
 - (4) the total costs incurred by a Polish taxpayer for related parties should be at least 3% of the total deductible costs for that year,
- the burden of proof that any of the above conditions have not been met will lie with the taxpayer,
- 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 REVENUES FROM BUILDINGS

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

The changes will apply to applications submitted from 1 January 2023.

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.

The amendments will come into force from 1 January 2023.

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As regards the *pay&refund* mechanism, the regulations as regards the tax remitter's statement will be more flexible:

- the statement will be filed no later than the last day of the second month following the month in which the threshold of PLN 2 million was exceeded,
- the validity of the tax remitter's statement will be extended until the end of the tax year in which the statement was filed, while for the subsequent payments the deadline for filing a supplementary statement will be moved to the end of the month following the tax year.

The changes regarding the timing of the first statement will apply to payments made after 31 December 2022, while in terms of the timing of the first statement and the submission of the supplementary statement, they are to apply to payments already made in 2022.

Certain obligations of tax remitters payers (issuers and so-called technical



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	<p>remitters) with regard to the withholding taxation of interest and discount on treasury securities (i.e. mortgage bonds and treasury bonds) will also be repealed – no obligation to file remitter’s statement.</p>
<p>DEBT FINANCING COSTS</p>	<p>Interpretation doubts regarding the 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 <u>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)</u>.</p> <p>In addition, restrictions on the costs of debt financing for equity transactions (Article 16(13f) of the CIT Act) will not apply:</p> <ul style="list-style-type: none"> ■ 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 (even if the taxpayer has previously acquired such shares and the subsequent acquisition occurs within 12 months of the first one), ■ 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. <p>The amendments are to apply in principle to debt financing costs incurred as of 1 January 2022 (not applicable to financing received up to the end of 2021 for equity transactions before that date). Relevant transitional provisions will apply for taxpayers with a shifted tax year.</p>
<p>AMENDMENT OF THE REGULATIONS CONCERNING THE POLISH HOLDING COMPANY (PSH)</p>	<p>Clarification of the provisions on possibility of using the holding regime by, among others:</p> <ul style="list-style-type: none"> ■ expanding the catalogue of legal forms in which a holding company may operate to include a simple joint-stock company, ■ expanding the right to benefit from the CIT exemption for dividends resulting from the Parent Subsidiary Directive to include holding companies, ■ clarification of the provisions on, among others, the holding of shares by a holding company in subsidiaries (1 year), ■ introduction of a 100% exemption from dividends (currently an exemption for 95% of dividends). <p>The amendments will apply to income (revenue) earned from 1 January 2023.</p>
<p>AMENDMENT OF THE REGULATIONS ON LUMP SUM TAXATION ON COMPANY INCOME (ESTONIAN CIT)</p>	<p>The amendments include:</p> <ul style="list-style-type: none"> ■ 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, ■ 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), ■ 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, ■ 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, ■ 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, ■ clarification of the provisions on the conditions for the entitlement to a lump sum



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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.

OTHER CHANGES

Other changes proposed as part of the bill include:

- confirmation that the provisions on the settlement of losses of companies belonging to tax capital groups apply also to losses arising before 2022,
- simplification and clarification of the rules on relief for bad debts (no need to show the relevant claims or liabilities in the tax return),
- modifications to the provisions on the relief for making an initial public offering (exclusion of deduction for taxpayers with income from qualified intellectual property rights),
- changes to the cost recognition of social security contributions,
- introduction of the obligation to submit the CIT-ST information electronically,
- 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,
- changes in transfer pricing regulations regarding tax havens, about which we have informed in separate communication.

The bill also introduces amendments to other regulations, including the PIT Act (amendments analogous to those implemented in the CIT Act), the Tax Ordinance and other.

The bill also extends the anti-inflation shields (including reduced excise duties on electricity and certain motor fuels, lower VAT rates for basic foodstuffs, electricity, heat and gas) until the end of December 2022.

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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