

Poland's draft decree proposes deferral of certain provisions of new withholding tax reform

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On 9 December 2019, Poland's Ministry of Finance published a draft decree (the decree) deferring, once more, the application of the key amendment to the new withholding tax (WHT) regime.

Under the draft decree, the default obligation to collect WHT at the statutory rates of 19% or 20%, regardless of relief at source available under a tax treaty or domestic exemption based on the European Union (EU) directives (unless special procedures are followed), would be further deferred until the end of June 2020.

As background, the key changes under the WHT reform introduced as of 1 January 2019 include:

- ▶ The obligation to collect WHT at the statutory rates of 19% or 20%, regardless of relief available under a tax treaty or domestic exemption based on the EU directives (pay and refund system). This obligation was originally deferred until end of June 2019,¹ then until the end of December 2019,² and the draft decree published on 9 December proposes to further defer this obligation to 30 June 2020.
- ▶ A new, more rigid definition of the beneficial owner (already effective).
- ▶ The Polish tax remitters' explicit obligation to exercise due diligence to determine if the payment recipient is eligible to benefit from relief at source (already effective).

It is important to note that other stringent elements of the reform would not be subject to deferral and have been effective as of 1 January 2019. That is, the Polish tax remitter is now obliged to exercise due diligence to determine if the payment recipient is eligible to benefit from relief at source. The new, more rigid definition of the beneficial owner is also already in force.

If the deferral proposal is passed, the additional time resulting from the postponement to collect WHT at the statutory rates of 19% and 20% will be a good opportunity for taxpayers and tax remitters, making cross-border payments, to analyze the impact of the new WHT regime and to secure their tax positions.

Endnotes

1. See EY Global Tax Alert, [Poland's Ministry of Finance publishes decree deferring certain provisions of its new withholding tax reform](#), dated 11 December 2018.
2. See EY Global Tax Alert, [Poland defers key impact of withholding tax reform](#), dated 2 July 2019.

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