22 April 2020
Global Tax Alert

Poland to impose withholding tax on cross-border payments as of 1 July 2020

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Executive summary

Poland's withholding tax reform, involving a pay-and-refund procedure, unless deferred, will enter into force on 1 July 2020. In practice, this means that cross-border payments that have to date benefited from exemptions or tax treaty-based withholding tax rates will, as a rule, become subject to a 19% or 20% withholding tax. Imposition of the new withholding tax rates will only be suspended if certain measures are taken (see *Actions needed* below).

Detailed discussion

The Polish withholding tax system to date has been based on a "relief at source" approach. This has resulted in many payments being subject to a full withholding tax exemption or preferential tax rates based on tax treaties concluded by Poland. The relief has been applied upon a payment if certain conditions were met (mostly formal conditions related to certificates of tax residence and statements from the receiving party).

The withholding tax reform in Poland has been partly implemented as of 1 January 2019 and now:

- A new, more rigid, definition of the beneficial owner applies
- Polish tax remitters are explicitly obliged to exercise due diligence to determine if the payment recipient is eligible to benefit from relief at source

However, the most significant change under the withholding tax reform has been deferred and is about to come into effect in two months (unless the deferral is extended). As of 1 July 2020, Polish tax remitters making cross-border payments (dividends, interest, royalty payments as well as fees for various services), will be required to collect withholding tax at 19% (dividends) or 20% (other payments), regardless of relief available under a tax treaty or a domestic exemption based on the European Union (EU) directives, if payments exceed PLN2 million annually (approx. US$500k).

Depending on the case, the payer or foreign recipient will be allowed (if fulfillment of strict conditions is proved) to apply for a refund of either full amount of the tax paid or the excess over an applicable tax treaty rate. The refund process may take six months, leading to a substantial reduction of cash flows.

There will be two exceptions from the above default scenario:

- A Polish payer may provide the Polish tax authorities with a statement signed by all of its board members in which they confirm that the recipient meets all conditions for relief at source (including the beneficial owner and real business activity tests). If the statement were to be successfully challenged by the tax authorities at a later date, the boardmembers would face severe personal liability.
- Application for an opinion issued by the tax office confirming that a withholding tax exemption applies. The opinion should be issued within six months. This measure is available only for relief under EU-Directive rules and is not available for relief claimed based on tax treaties.

Actions needed

Considering the stringent new beneficial owner definition and real business activity test, the application for an opinion from the tax office or application for a tax refund would require diligent preparation. Businesses considering a statement by the board members of the Polish payer would also need to take immediate action to limit the personal risk of such individuals.

Given that both procedures would take approximately six months, multinational groups should take prompt action to prepare their respective approach. Otherwise, 19% or 20% of payments from Poland will be collected by the tax authorities, temporarily or permanently.

In light of the situation related to COVID-19, where governments may need to focus on fiscal revenue needs, exceptional scrutiny by the tax authorities is likely to become a new reality. Therefore, appropriate and timely preparation is essential.

For additional information with respect to this Alert, please contact the following:

EY Doradztwo Podatkowe Krupa sp. k., Warsaw

- Andrzej Broda andrzej.broda@pl.ey.com
- Marcin Opiłowski marcin.opilowski@pl.ey.com
- Magdalena Zalech magdalena.zalech@pl.ey.com
- Michał Koper michal.koper@pl.ey.com

EY Doradztwo Podatkowe Krupa sp. k., Wroclaw

- Sebastian Ickiewicz sebastian.ickiewicz@pl.ey.com

Ernst & Young LLP (United States), Polish Tax Desk, New York

- Sylwia Migdal sylwia.migdal1@ey.com
- Joanna Pachnik joanna.pachnik1@ey.com

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EYG no. 002334-20Gbl

1508-1600216 NY
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