

Poland announces amendments to withholding tax reform

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The final element of Poland's new withholding tax (WHT) regime will be effective as of 1 January 2021. As reported in a prior [EY Global Tax Alert](#), this last amendment will require that, in many cases, the Polish tax remitters, when making subject-to-WHT cross-border payments, 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).

On 4 September 2020, the Polish Ministry of Finance announced at a pre-consultation meeting the main assumptions of the draft amendments to the *Corporate Income Tax (CIT) Act for 2021* with respect to the WHT regime, which provide further amendments to this new regime. The announced modifications address the following:

- ▶ Payments made to third parties will fall outside the scope of the pay and refund system (relief at source may apply here; the pay and refund system will apply solely to payments between related parties).
- ▶ Only dividends, interest and royalties (so called "passive payments") will be subject to the pay and refund regime; payments for services will not be subject to this regime (relief at source may apply here); however, application of relief with respect to payments for services still requires verification of new conditions in force already as of 1 January 2019, including the new beneficial owner definition.

- ▶ Opinions (pre-clearance) issued by the tax authorities also will be available with respect to exemptions or reduced rates based on tax treaties (currently, it is available only to payments to related parties that benefit from WHT exemptions based on the EU Parent-Subsidiary Directive or Interest-Royalty Directive).
- ▶ Changes in the beneficial owner definition.
- ▶ Additional guidance related to due care procedures in verification of WHT relief conditions (including the beneficial owner condition) - it is expected that related parties will need to apply stricter standards of due care.
- ▶ Elimination of the pay and refund regime with respect to dividend payments to Polish recipients.
- ▶ Statements on fulfillment of conditions can be signed by Management Board Members in line with the formal rules of representation of the remitter (but not necessarily by all board members).
- ▶ Extension of the applicability of clearance opinions until the end of 2023.

The exact wording of the announced amendments has not been released yet but based on the statement from officials of the Polish Ministry of Finance, it appears that these modifications will be enacted this year and become part of the new WHT package in force as of 2021.

The final months of this calendar year should be used to make certain that the groups are well prepared to operate under the new regime as of 2021 without additional tax leakage, especially taking into account the more stringent conditions for WHT relief in Poland and a new pay and refund mechanism. Alternatively, reductions in net distributions from Poland should be accounted for.

The proposed amendments may offer some additional clarifications and measures to formally secure the WHT position. Nevertheless, actions should be promptly taken given the significance and reach of the reform.

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