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Global Tax Alert

Poland announces bill to amend corporate income tax rules

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Executive summary

On 4 September 2020, Poland's Council of Ministers announced a bill amending the corporate income tax (CIT) rules, which may have far-reaching consequences for various businesses in Poland. The proposed amendments cover a wide array of tax aspects including taxation of partnership, tax deductibility of debt financing costs, the application of tax amortization and transfer pricing rules. The exact scope and wording of the bill has not been published yet, but it is expected that the bill will still be adopted in 2020 and the changes will come into force on 1 January 2021.

Detailed discussion

While the first draft of the bill has not been published yet, the announcement lists a number of expected changes to the *CIT Act* which are aimed at:

- Introducing a principle that upon the disposal of shares of a real-estate rich company, the obligation to pay tax will be borne by the company whose shares are being sold, rather than the shareholders of that entity.
- Treating limited partnerships (*pol. spółka komandytowa*) as taxpayers of CIT in Poland (that is, eliminating tax transparency of such entities). In a similar manner, general partnerships (*pol. spółka jawna*) would be subject to CIT in Poland where partners in such partnership are not disclosed.

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- Clarifying rules regarding the EBITDA[1]-based limitation for interest deductibility.
- Allowing the extension of the exemption from the minimum levy on commercial real estate in cases where the state of the epidemic (related to COVID-19) would continue in Poland after 31 December 2020.
- Adjusting regulations regarding "Polish source income" to the wording of double tax treaties as amended by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*.
- Amending rules in such a way that the distribution in-kind of liquidation proceeds would be a taxable event in Poland (currently, there is no uniform interpretation of rules among tax authorities and courts).
- Extending cases of applying the arm's-length rule and preparing transfer pricing documentation, in particular where a beneficial owner has its seat in a tax haven.
- Introducing an obligation to prepare and publish "tax policy" by certain taxpayers.
- Limiting utilization of tax losses in cases of certain group restructurings.
- Aligning tax depreciation write-offs with accounting principles.
- Increasing the threshold for "small taxpayers" benefiting from the lower 9% CIT rate from €1.2m to €2m.

Next steps

The bill is expected to be disclosed to the public soon. The bill will also be discussed by the Council of Ministers and if approved will undergo further legislative process (that is, voting in the Sejm and Senat – the lower and upper chamber and signing by the President). It is anticipated that the bill will be signed and published by the end of November and will come into force as of 1 January 2021.

Endnote

1. EBITDA: Earnings before interest, taxes, depreciation and amortization.

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 Opilowski 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 Migdał sylwia.migdal1@ey.com
- Joanna Pachnik joanna.pachnik1@ey.com

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