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Global Tax Alert

Poland publishes draft bill amending corporate income tax rules

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Executive summary

On 16 September 2020, Poland's Council of Ministers published a draft bill (dated 15 September 2020) amending the corporate income tax (CIT) rules to be in force from 1 January 2021. The bill confirms the earlier announcements on the direction of the changes, which are summarized in a previous *EY Global Tax Alert*, and also sheds more light on the details of the new regulations. As initially envisaged, the proposed amendments have far-reaching consequences and cover a wide array of tax aspects including taxation of partnerships, the obligation to report own tax policy by taxpayers, new obligations on real-estate rich companies, limits on adjustments of tax depreciation rates and amended transfer pricing rules.

Detailed discussion

The proposed changes in the bill include the following:

- Limited partnerships (*pol. spółka komandytowa*) will be treated as CIT taxpayers 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 (who are not exclusively natural persons) in such partnership are not disclosed to the tax authorities.

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- An entity will meet the definition of "real estate rich" if at least 50% of the market value of the assets of such an entity, in any period within the previous 12 consecutive months, constituted real estate located in the territory of the Republic of Poland or the rights to such real estate.
- Payment of capital gains tax upon the transfer of shares of a real estate rich company will become an obligation of that company (the subject of transfer), not of the shareholders of that entity, if either the transferor or the transferee is not tax resident in Poland.
- The obligation for a real estate rich company, tax resident outside the European Union/European Economic Area, to appoint a tax representative in Poland.
- Real estate rich companies (and their direct and indirect shareholders) will be required to periodically inform the tax authorities about their direct and indirect shareholders and their tax results will be published by the tax authorities (currently the latter related only to taxpayers with annual revenue exceeding €50m). Real estate rich companies will also be required to adopt a tax policy and to publish annual information on the execution of its tax policy.
- For other companies, a tax policy will be obligatory if their revenue exceeds €50m or they have the status of a tax capital group (tax consolidation regime in Poland).
- An adjustment of the regulations governing "Polish source income" in a way that the period over which a percentage of real estate assets in all assets of the company is measured, will be any point in time during 12 months prior to the transfer of shares, whereas currently it is measured at the last day of a month preceding the transfer. The value of real estate will now be defined as market value, while currently the prevailing approach is book value.
- Amendment of the existing rules to provide 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).
- An extension of the application of the arm's-length rule and preparation of transfer pricing documentation, in particular where a beneficial owner (not only the counterparty) has its seat in a tax haven. Additionally, unless proved otherwise, it will be assumed that the beneficial owner of the counterparty in a transaction has its seat in a tax haven if that counterparty, in a given tax year, had any transaction with any tax haven's resident.
- Further limits on the utilization of tax losses in cases of certain group restructurings.
- Limitation of the ability to change the depreciation rate in cases where the taxpayer benefits from the CIT exemption.
- An 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.
- An increase in the revenue threshold for "small taxpayers" benefiting from the lower 9% CIT rate from €1.2m to €2m.

Next steps

The bill will 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.

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