

## Poland implements significant changes to corporate income tax law - final bill published in *Journal of Laws*

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### Executive summary

On 30 November 2020, the bill amending the corporate income tax (CIT) rules was published in the official *Journal of Laws*, which completes the legislative process. The new law will be effective as of 1 January 2021, apart for several exceptions.

The amendments have far-reaching consequences and cover a wide array of tax aspects including taxation of partnerships, the obligation to publish a report on execution of own tax policy by taxpayers, new obligations on real-estate rich companies and limits on the use of tax losses.

### Detailed discussion

The adopted changes 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*) will be subject to CIT in Poland where partners (who are not exclusively natural persons) in such a partnership are not disclosed to the tax authorities. Importantly, the limited partnership will be able to solely decide whether the new regulations imposing the CIT taxpayer status will apply for it from 1 January 2021 or from 1 May 2021.

- ▶ Entities that generate revenue in excess of €50m during the tax year or tax capital groups (tax consolidation regime in Poland) will be required to publish annual information on the execution of their tax policy. Such taxpayers will be required to publish the information on their website by the end of the 12th month following the end of the tax year. The scope of the information to be published is broad and may concern business sensitive areas.
- ▶ A definition of a “real estate rich company,” is introduced which covers two cases:
  - For entities starting their business activity - a real estate rich company is an entity in which, on the first day of the tax or fiscal year, at least 50% of the market value of assets, directly or indirectly, constituted the market value of real estate located in Poland (or rights to such real estate), and the market value of these properties exceed PLN10m.
  - In the case of other entities - a real estate rich company is an entity in which, on the last day of the preceding year, at least 50% of the book value of assets, directly or indirectly, constituted the book value of real estate located in Poland (or the rights to such real estate) and the book value of these properties exceeded PLN10m and at least 60% of the revenues result from rent, lease or contracts of similar nature, or transfer of ownership of real estate or rights to it, or from shares in other real estate companies.

As a result, the definition of a real estate rich entity might also cover foreign entities holding shares in Polish companies owning 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 a transfer), not of the seller (transferor), if the transferor is not a Polish tax resident and the subject of the disposal are shares (stock) giving at least 5% of the rights to vote in the company or at least 5% right of participation in the company's profit (transfers made in a 12-month period should be counted cumulatively).
- ▶ There is an 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, who have shares/stock giving them at least 5% of the voting rights in the company or at least 5% of the right to participate in the company's profit will be required to annually inform the tax authorities about:
  - Entities holding, directly or indirectly, in this real estate rich company shares (stock), rights and obligations, participation titles etc. along with the quantum of such rights held by each of them - in the case of information provided by real estate rich companies.
  - The number of shares (stock) owned, directly or indirectly, in this real estate rich company, all rights and obligations, participation titles, etc. - in the case of information provided by shareholders of real estate rich companies.
- ▶ Amendment of the existing rules to provide that the distribution in-kind of liquidation proceeds would be a taxable event in Poland for the entity that is liquidated (deemed sale of distributed assets).
- ▶ An extension of the application of the arm's-length rule and preparation of transfer pricing documentation, in particular where a beneficial owner of payments (not only the transaction counterparty) has its seat in a tax haven and the value of this transaction for the tax year exceeds PLN500k. 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) continues in Poland after 31 December 2020, until the end of the month in which the epidemic state is canceled.
- ▶ An increase in the threshold for “small taxpayers” benefiting from the lower 9% CIT rate from €1.2m to €2m.

## Next steps

The implemented changes may have a significant impact on the tax obligations and burden of tax in Poland. The time remaining before the new obligations enter into force (generally the next month) should be used to prepare the respective business to address the new requirements and limit the risk of sanctions and tax leakage.

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