

Tax Agenda Poland

October 2021



No.	Fact	Action	
1	Minimum taxation to apply to taxpayers in a tax loss position or with a tax profitability ratio below 1%. Tax will be computed as 0.4% of operating revenue and 10% of other qualified items. Certain exceptions and deductions may apply. Proposed effective date 1/1/22. See more	Review your group entities to assess if your group can be affected. Run mock tests to determine impact, if in scope entities are identified.	● ● ●
2	19% tax on so called 'shifted profits' (similar to undertaxed payment rule) to be imposed on certain types of direct or indirect payments to related entities, generally if such payment is effectively taxed at 14.25% or lower and other conditions are met. Proposed effective date 1/1/22. See more	Analyze tax treatment of payments by the recipients, determine if new taxation impacts any of the group entities and measure the extent of such an impact. Investigate whether any exceptions provided by the law may apply.	● ● ●
3	Costs considered to be 'hidden dividend' would not be deductible for tax purposes. New limitation to apply to related party payments where e.g. amount or timing depends on a taxpayer's profit or for use of assets that had been owned by a related party already before a taxpayer existed. Certain exceptions could apply. Likely deferral to 1/1/23. See more	May be deferred by 1 year and possibly modified due to controversies around potential impact on transfer pricing models. Monitor status to evaluate impact.	● ● ●
4	New pay-and-refund Withholding Tax (WHT) regime for payments exceeding in total ca. EUR 450k p.a. to apply from 1 January 2022 (after several deferrals) with beneficial owner rules for all subject-to-WHT payments. Scope of cases that can be secured by WHT clearance opinion broadened. See more	Prepare for payments in 2022 and decide which formal measure to apply to confirm applicability of a relief at source (exemption or lower rates). Check that beneficial owner analysis has been done and consider personal liability of management board members.	● ● ●



● Compliance ● Risk management ● Cash-flow / ETR impact

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5	For the first time local implementation of anti-hybrid measures under Anti-Tax Avoidance Directive II is to be taken into account in annual CIT settlement for 2021 (rules in force as of 1 January 2021). Limitations may affect not only financing costs but also other deductions (e.g. costs of goods or services purchased by Polish subsidiaries). See more	Determine if deductions should be limited in Poland. Analyze tax treatment of payments and status of entities at the group level with particular focus on potential imported mismatches.	
6	Proposed reform in Personal Income Tax (PIT) and social security system in Poland can increase the overall payroll cost and affect individuals' net income. The changes may affect employees, employers, entrepreneurs and board members contracted under almost all forms of cooperation.	Analyze the impact on your payroll budget and situation of each group of individuals employed or cooperating based on business-to-business agreements with your group in Poland. Assess impact on competitiveness of remuneration models. Where applicable, analyze alternatives.	
7	„Real estate company” - new obligations and restrictions, including: share deal tax remitter obligation, reporting on shareholding (filing by shareholders also required in some cases), no or limited tax depreciation of real estate assets. See more	Analyze whether under the new definition any of the group companies can be considered a Polish „real estate company”. Fulfill new obligations and assess impact on ongoing taxation and reorganizations.	
8	Taxpayers with revenues exceeding EUR 50m and tax capital groups obliged to prepare and publish on their website detailed information on execution of their tax strategy. First reports due already by the end of 2021 (with respect to 2020). See more	Where applicable to the Polish subsidiaries make sure that sufficient tax procedures are implemented and adequate process is set up to gather and assess information about the entity and the group, to be made publicly available in Poland.	
9	Proposed changes offer enhancement of R&D deduction and IP Box regimes (including use of both to the same activity) and also introduce new deductions for i.a. robotization, prototypes, innovative employees, business expansion, consolidation or Initial Public Offering (IPO).	Check if all new treatments were identified and applied (in some cases possible also with respect to previous periods, up to 5 years back). Measure possible positive impact if incentives were applied.	
10	Taxpayers undertaking intra-group transactions are obliged to comply with relevant Transfer Pricing requirements. The preparation of the documentation and confirmation of arm's length character of the transactions must be declared by company management in a signed statement. Non-compliance may be subject to tax penalties and personal fiscal penalties.	Verify transfer pricing obligations concerning controlled transactions and make sure the analysis takes into account the newest provisions introduced. Check for validity of economic studies supporting TP method used for testing purposes (to some extent with regard to the potential effect of the COVID pandemic in FY2020).	
11	Polish transfer pricing documentation obligations also cover transactions with beneficial owners located in tax havens, regardless of the relationship between the counterparties of the transaction. It is assumed that beneficial owner is located in tax haven if the direct counterparty of the transaction makes settlements with tax haven entities. The materiality threshold for such transactions is PLN 500k.	Check transaction counterparties for entities with beneficial owners located in tax havens. Implement proper procedures for the analysis, since the definition of the beneficial owner may have broad interpretation while the provisions require taxpayers to establish the existence of transactions with tax haven beneficial owners with 'due diligence'.	

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12	Electronic invoices are expected to replace traditional invoices documenting transactions. Company's systems and processes may require amendments to comply with the new requirements. Electronic invoices are expected to be voluntary from 1/1/2022 and obligatory from 1/1/2023.	Plan necessary actions to confirm that the organization will be ready for electronic invoices in Poland. Identify all areas, where changes will be needed (e.g. finance, IT, logistics, procurement) and act in advance to avoid critical disruptions in the future.	 
13	It is proposed that electronic accounting books are to be sent to the tax authorities on an ongoing basis from 1/1/2023.	Identify technical requirements and confirm that the organization will be ready to comply.	 
14	Proposed amendments of rules regarding various reorganizations, such as mergers, demergers or share for share swaps. Expected to be effective as of 1/1/2022.	Take care that all plans regarding reorganizations in your group are validated to take into account the proposed changes.	  
15	Other key changes under the recently proposed „Polish deal” legislation from 2022: <ul style="list-style-type: none"> ▶ Changes to CIT tax grouping regime and possibility of VAT grouping ▶ Extension of the Polish CFC regime expected to capture broader range of entities ▶ New Polish holding company regime with exemptions ▶ Investment agreement („ruling 590”) as a single agreement with the tax authorities for large investors 	Analyze potential impact on the organization. Plan in advance to be prepared for changes and manage the risk of non-compliance.	  
16	Polish MDR regime provides for broader obligations than DAC6 and also requires non-Polish entities (including non-EU residents) to file reports in Poland. With partial deferral of MDR deadlines due to COVID-19 a backlog of transactions could be subject to reporting in a short period of time.	Confirm with the Polish subsidiary that procedures have been implemented and persons responsible for MDR appointed. Check also if non-Polish entities must report in Poland. Carry out MDR review where needed. Apply self-disclosure procedure in case of late reporting.	 

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EYG no. 009195-21Gbl
ED: None

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