Tax Agenda Poland

January 2022

Building a better working world

No.	Fact	Action
1	**Minimum tax from 1 January 2022** Minimum taxation applies to taxpayers in a tax loss position or with a tax profitability ratio below 1%. Tax is computed as 0.4% of operating revenue and 10% of other qualified items. Certain exceptions and deductions may apply. 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	**Shifted profit tax from 1 January 2022** 19% tax on so called 'shifted profits' (similar to undertaxed payment rule) 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. 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	**Hidden dividend not deductible for tax purposes** Costs considered to be 'hidden dividend' will not deductible for tax purposes. New limitation is deferred to 1 January 2023 and rules governing the limitation are to be re-drafted prior to implementation. See more	Deferred by 1 year and possibly to be modified due to controversies around potential impact on transfer pricing models. Monitor status to evaluate impact.
4	**Withholding Tax pay and refund regime from 1 January 2022** New pay-and-refund Withholding Tax (WHT) regime for payments exceeding in total ca. EUR 450k p.a. applies from 1 January 2022 (after several deferrals), except for payments to third parties and payments for services. However, beneficial owner rules will in practice apply to all subject-to-WHT payments. Scope of cases that can be secured by WHT clearance opinion has been broadened. See more	Prepare for payments in 2022 and decide if formal measures can be applied 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.

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Compliance · Risk management · Cash-flow / ETR impact

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5	**ATAD II anti-hybrid restrictions impact CIT settlements for 2021** 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	If not done yet, 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	**Major reform in taxation of personal income and social security contributions** The 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, which applies from 1 January 2022, may affect employees, employers, entrepreneurs and board members contracted under almost all forms of cooperation. See more	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	**Broad range of obligations for real estate rich entities** *'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. The new law is effective as of 1 January 2021, apart for several exceptions. 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	**Obligation to publish report on execution of tax strategy** Taxpayers with revenues exceeding EUR 50m and tax capital groups are obliged to prepare and publish on their website detailed information on execution of their tax strategy. First reports were due 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. Ensure publication within applicable deadline.		
9	**Broader scope of tax incentive system from 2022** Adopted changes offer enhancement of research and development tax relief (R&D) deduction and Intellectual Property Box (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 incentives were identified and applied (in some cases possible also with respect to previous periods, up to 5 years back). Evaluate impact under new regulations.		
10	**Wide scope of year-end transfer pricing obligations** 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 ensure that the analysis takes into account the newest provisions introduced. Check validity of economic studies supporting TP method used for testing purposes (also with regard to the potential effect of the COVID-19 pandemic).		
11	**Beneficial owner of payments impacts transfer pricing obligations** Polish transfer pricing documentation obligations cover also 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 countries applying harmful tax competition. Implement proper procedures, since the definition of the beneficial owner may have broad interpretation and the provisions require taxpayers to establish, with due diligence, existence of transactions where the beneficial owner is from a country applying harmful tax competition.		

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12	**Electronic invoices** 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 voluntary from 1 January 2022 and will be obligatory from 1 January 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	**Electronic filing of accounting books** Electronic accounting books are to be sent to the tax authorities on an ongoing basis from 1 January 2023.	Identify technical requirements and confirm that the organization will be ready to comply.
14	**New tax requirements for business reorganizations from 2022** Important amendments of rules regarding various reorganizations, such as mergers, demergers or share for share swaps. In particular, neutrality may be affected. Effective as of 1 January 2022.	Ensure that all plans regarding reorganizations as well as ongoing restructurings in your group are validated to take into account the changes from 1 January 2022.
15	**Other changes under 'Polish deal' reform package** Other key changes under the „Polish deal" legislation from 2022: ▸ 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 use new opportunities, manage the risk of non-compliance.
16	**Wide range of Polish MDR reporting** 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 have been 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.
17	**Important amendments to the tax treaty with the Netherlands** The tax treaty between Poland and Netherlands will contain a number of substantial changes, such as introduction a real estate clause and an anti-avoidance provision in a form of a 'principal purpose test'. In particular, changes might impact investors using Dutch holding companies to structure investments into Poland. The changes are expected to be apply from 1 January 2023. See more	Review your group entities to assess if your group can be affected. Be prepared for changes and manage.

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