Tax Agenda Poland

January 2023

EY

Building a better working world

No.	Fact	Action	
1	**Shifted profit tax on cross-border payments** A tax of nineteen percent on so called "shifted profits" has been 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. Tax may be due from Polish entities as well as Polish permanent establishments of foreign taxpayers. Regime in force as of 1 January 2023 slightly amends earlier regulations applicable in 2022. 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. Monitor developments under the proposed act amending shifted profit tax.	☐
2	**Enhanced R&D enhanced deduction and other incentives** The tax incentive package has been enhanced including deduction of up to additional 200% of certain research and development (R&D) expenses, Intellectual Property Box (IP Box) system (it is possible to use R&D deduction and IP Box for the same activity) and new deductions have been introduced e.g., for robotization, prototypes, innovative employees, business expansion, consolidation or initial public offering (IPO). See more	Check if all new incentives were identified and applied (in some cases possibly also with respect to previous periods, up to five years back). Evaluate impact of new regulations.	☐
3	**Withholding Tax pay-and-refund regime from 1 January 2022** New pay-and-refund Withholding Tax (WHT) regime for payments to one related party recipient exceeding in total ca. EUR 450k p.a. applies from 1 January 2022, except for payments for services. However, beneficial owner requirements in practice apply to all subject-to-WHT payments. See more	Prepare in advance for subject to WHT payments (dividend distributions, interest or royalty payments) to secure time required to obtain formal WHT clearance (exemption or lower rates) or prepare for a pay-and-refund procedure. Confirm whether beneficial owner analysis has been done and consider personal liability of management board members.	☐

Jan	Feb	Mar	Apr

Use text boxes above the timeline to plan your actions for coming months

● *Compliance* ● *Risk management* ● *Cash-flow and ETR impact*

No.	Fact	Action
4	**ATAD II anti-hybrid restrictions limit deductibility of costs** Polish implementation of anti-hybrid measures may, in certain situations, lead to different conclusions than under the Anti-Tax Avoidance Directive II. Limitations may affect financing costs and other deductions (e.g. costs of goods or services purchased by Polish subsidiaries). See more	If not done yet, determine if the new rules limit deductions in Poland. Analyze the tax treatment of payments and status of entities at the group level with particular focus on the imported mismatches rules. Check if ATAD II impact was taken into account in CIT settlement and consider confirming the position in a tax ruling.
5	**Minimum tax postponed until 1 January 2024** Minimum taxation may apply to taxpayers in a tax loss position or with a tax profitability ratio below 2%. The tax may be computed as 0.15% of operating revenue and 10% of other qualified items or under an alternative method as 3% only of operating revenue. Certain exceptions and deductions may apply. See more	Review your group entities to assess if your group can be affected. Monitor developments in the area of minimum tax and verify whether any exceptions or deductions apply.
6	**Energy efficiency** The costs of energy will be one of the most important factors determining entrepreneurs' competitive position on the market in 2022 as well as in following years. Increasing energy prices may affect the most important business decisions, especially those to be made by companies in energy-intensive industries.	Analyze the areas of possible energy cost inefficiency. Verify whether the company has used the tools available to reduce the energy costs, such as: co-financing of investment costs to reduce energy expenses, white certificates, exemption from excise duty on electricity, gas and coal purchased and discounts on the fees chargeable on various green certificates.
7	**Recover non-deductible costs of intangible services** Taxpayers who limited their tax deductible costs due to the provisions of Article 15e of the CIT Act in particular cases may retain the right to deduct them in the next 5 tax years according to the applicable limits—even after this provision has been abolished.	Review if in the previous years any of your group entities excluded costs from their tax basis due to limitations imposed on certain intangible services costs (article 15e of the Polish CIT Act). If yes, determine if deduction can still be taken on these costs.
8	**Specific obligations for real estate rich entities** *'Real estate company'*—specific obligations and restrictions, including: share deal tax remitter obligation, reporting on shareholding (filing also by shareholders), no or limited tax depreciation of some real estate assets. See more	Analyze whether under the extended definition any of the group companies can be considered a Polish 'real estate company'. Fulfill new obligations and assess impact on ongoing taxation, reporting obligations, transactions and reorganizations.
9	**Other changes in the CIT Act** Besides changes mentioned in specific points in this summary, the recent reform is expected to impact e.g.: ▸ Limitations on debt financing costs ▸ Polish holding company regime ▸ Controlled Foreign Company rules ▸ Lump-sum taxation regime	Analyze potential impact on the organization and Polish companies.
10	**Tax strategy for the prior tax year** Taxpayers with revenues exceeding EUR 50m p.a. and tax capital groups are obliged to prepare and publish on their website detailed information on execution of their tax strategy. By 31 December 2022 information on the implemented tax strategy has to be published.	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.

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11	**Changes to Transfer Pricing regulations** The new regulations include simplifications with regard to transfer pricing adjustments, simplifications regarding safe harbor and re-invoicing, or extension of deadlines for transfer pricing obligations. Starting from fiscal year 2022, a statement on the arm's length character of transfer prices will be included in the TPR form, and the said form will have to be filed by an appointed member of the management board – it will not be possible to file a TPR by a proxy, with exception of a proxy being an attorney, legal counsel, tax advisor or auditor.	Get acquainted with the new regulations and determine how they affect your reporting obligations for transfer pricing documentation and TPR form. Consider personal liability of management board members.	● ●	☐
12	**Electronic invoices** New law enabling taxpayers to issue invoices in a structured form and implementing the National System of e-Invoices (KSeF) entered into force on 1 January 2022. From 2024, the KSeF will be obligatory for all invoices issued in line with Polish VAT provisions – by entities either with a seat or a Fixed Establishment in Poland and will replace other forms of invoicing. Company's systems and processes may require significant amendments to comply with the new requirements. See more	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	**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.	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.	● ●	☐
14	**Other changes under 'Polish deal' reform package** Other key changes under the "Polish deal" legislation: ‣ 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.	● ● ●	☐
15	**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.	● ●	☐

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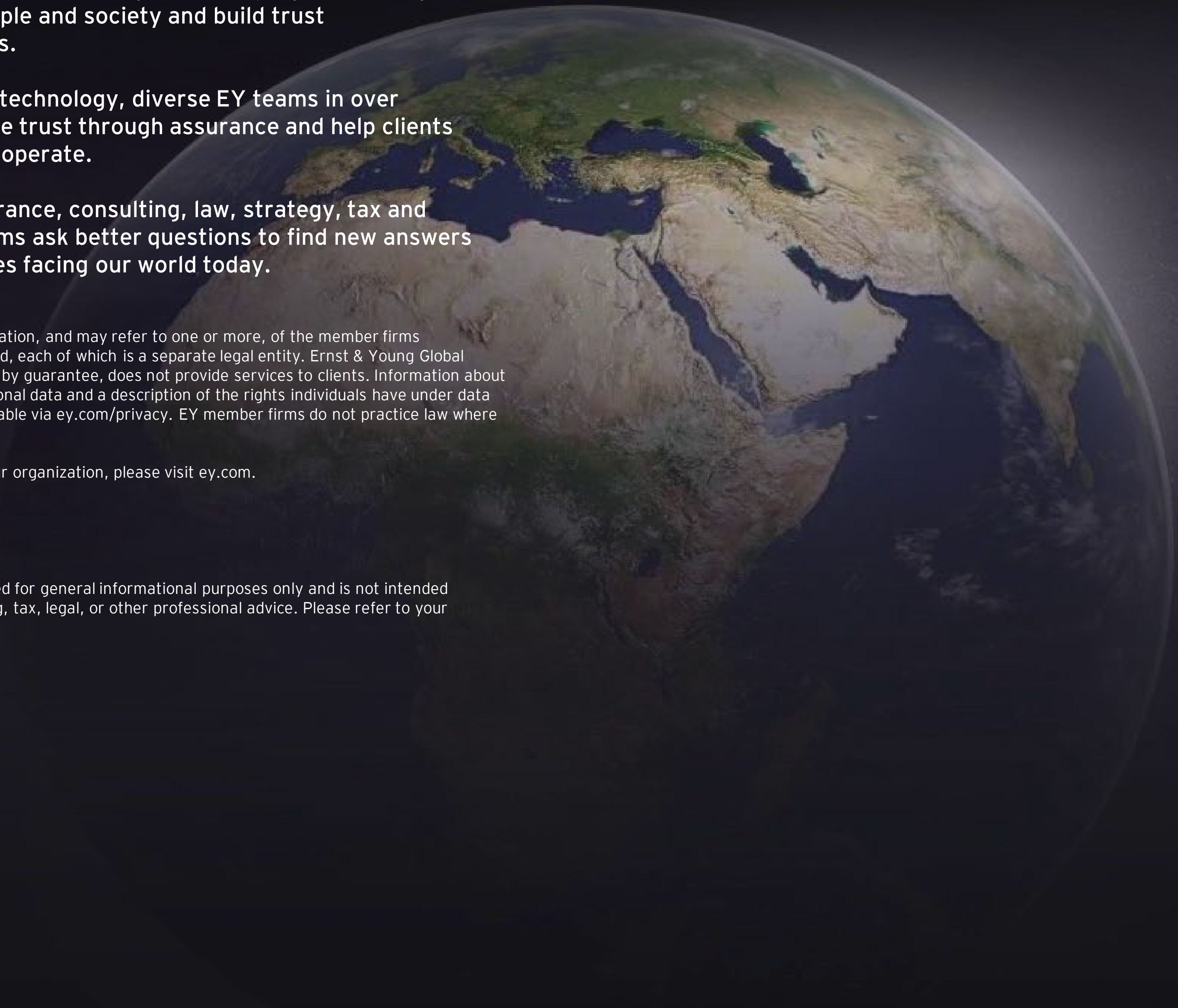

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