Tax Agenda Poland

May 2023

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. Polish entities are obliged to hold evidence showing if at least one of the conditions for tax to apply has not been met (burden of proof is on a taxpayer). 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. Make sure that the Polish entity possesses evidence showing that at least one of the conditions for the tax to apply has not been met.
2	**Enhanced R&D 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** New pay-and-refund Withholding Tax (WHT) regime for payments to a related party recipient exceeding in total ca. EUR 430k 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.

May | Jun | Jul | Aug

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

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

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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	**Draft law implementing global minimum tax expected in Q2 2023** Representatives of the Polish Ministry of Finance confirmed that works on local implementation of the global minimum tax is one of the priorities of their tax policy. First proposal of provisions implementing the minimum tax in Poland is expected mid year.	Analyze whether the company and the group will be subject to the global minimum tax and assess the potential impact. Determine the potential impact on effectiveness of tax incentives and possible reactions.
6	**Grants to develop and implement new or improved solutions (FENG program—European Funds for Modern Economy)** Grants for projects involving the development of new or significantly improved solutions and/ or the implementation of the outcomes of R&D work developed/ purchased for the purpose of an entrepreneur's internal operations are now available. The second round of call of proposals starts on 10 May 2023.	Analyze if your projects are eligible, estimate the amount of maximum aid available and apply for various forms of support including grants or guarantees for financing to help carry out such projects. The total budget of the FENG program in Poland is almost EUR 8 b.
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	**New rules for moving excise goods** A new method of moving excise goods with excise duty paid between Poland and other EU Member States has been introduced lately. The receipt and dispatch of selected excise goods from EU and to EU will be performed only by entities with a particular status—certified consignor and certified consignee, on the basis of electronic e-SAD documents. Lack of using the e-SAD may result in imposing of severe penalties on the grounds of the penal fiscal code.	If you purchase or supply excise goods from or to other EU, it will be necessary to assess the scope of application of the new rules to your business, perform the required registration and prepare for new obligations connected with the sending and receipt of e-SAD.

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11	**Changes to transfer pricing regulations** The new regulations include simplifications with regard to transfer pricing adjustments, or extension of deadlines for transfer pricing obligations. After the changes, a statement on preparation of TP documentation and on the arm's length character of transfer prices is included in the TPR form and the said form has 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 familiar 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 (likely from 1 July), the KSeF will be obligatory for majority of 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.	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	**Cooperative Compliance Program** A new form of in-depth cooperation between the largest taxpayers and the tax administration, based on models from other countries and in line with the global ESG (environmental, social and governance) trend. The program assumes specific benefits (such as reducing tax and personal risks or facilitations and simplifications in tax settlements) in exchange for increased transparency and organization of the tax function within the company.	Conducting an in-depth analysis of the potential related to participation in the Program (e.g., tax certainty, fast path in concluding tax agreements) for a specific entity.		
14	**Other changes under "Polish deal" reform package** Other key changes under the "Polish deal" legislation: ‣ New tax requirements for business reorganizations ‣ 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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