

# Tax Agenda Poland July 2023

No.	Fact	Action
-----	------	--------

1	<p><b>New shifted profit tax on cross-border payments – documentation requirements</b></p> <p>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. <a href="#">See more.</a></p>	<p>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. For companies whose calendar year is the same as a tax year, the first settlement was due by 30 June 2023.</p>
---	--	---

2	<p><b>Poland to lift COVID-19 suspension for MDR deadlines by end of June 2023</b></p> <p>The Polish Ministry of Health announced that it expects COVID-19 epidemic emergency status will be cancelled on 30 June 2023, which will affect the current suspension of reporting deadlines for mandatory disclosure rules (MDR) for certain tax arrangements. The planned lifting of the epidemic emergency status means that the suspension of MDR reporting deadlines will end 30 days from the point when the epidemic emergency is lifted (i.e., end of July 2023). The time to prepare for reporting will, therefore, be relatively short. <a href="#">See more.</a></p>	<p>All entities that are obligated to file MDR reports in Poland should now review their transactions and arrangements (for at least the last three years) to determine the scope of these obligations in Poland and be ready to report in July and August 2023.</p>
---	--	--

3	<p><b>Withholding tax pay-and-refund regime</b></p> <p>The pay-and-refund Withholding Tax (WHT) regime for payments to a related party exceeding in total ca. EUR 430k p.a. requires additional procedural measures to apply lower than standard WHT rates. However, beneficial owner requirements and obligation to apply and evidence due diligence may apply in practice to subject-to-WHT payments regardless of the amounts. <a href="#">See more.</a></p>	<p>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.</p>
---	---	--



No.	Fact	Action
4	<p><b>Enhanced R&amp;D deduction and other incentives</b></p> <p>The tax incentive package has been enhanced including deduction of up to additional 200% of certain research and development (R&amp;D) expenses, Intellectual Property Box (IP Box) system (it is possible to use R&amp;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). <a href="#">See more.</a></p>	<p>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.</p>
5	<p><b>ATAD II anti-hybrid restrictions limit deductibility of costs</b></p> <p>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). <a href="#">See more.</a></p>	<p>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.</p>
6	<p><b>Impact of global minimum tax on Polish entities</b></p> <p>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 and new information in this area can be expected soon.</p>	<p>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. Consider starting modeling now to secure enough time for reaction and alignment.</p>
7	<p><b>Grants to develop and implement new or improved solutions (FENG program–European Funds for Modern Economy)</b></p> <p>Grants for projects involving the development of new or significantly improved solutions and/ or the implementation of the outcomes of R&amp;D work developed/ purchased for the purpose of an entrepreneur’s internal operations are now available. The second round of call of proposals started on 10 May 2023.</p>	<p>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.</p>
8	<p><b>Recover non-deductible costs of intangible services</b></p> <p>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.</p>	<p>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.</p>
9	<p><b>Specific obligations for real estate rich entities</b></p> <p>“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. <a href="#">See more.</a></p>	<p>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.</p>
10	<p><b>Other changes in the CIT Act</b></p> <p>Besides changes mentioned in specific points in this summary, the recent reform is expected to impact, e.g.:</p> <ul style="list-style-type: none"> <li>▶ Limitations on debt financing costs</li> <li>▶ Polish holding company regime</li> <li>▶ Controlled Foreign Company rules</li> <li>▶ Lump-sum taxation regime</li> </ul>	<p>Analyze potential impact on the organization and Polish companies.</p>

No.	Fact	Action	
11	<p><b>New rules for moving excise goods</b></p> <p>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.</p>	<p>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.</p>	● ●
12	<p><b>Changes to transfer pricing regulations</b></p> <p>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.</p>	<p>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.</p>	● ●
13	<p><b>Electronic invoices</b></p> <p>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.</p>	<p>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.</p>	● ●
14	<p><b>Cooperative Compliance Program</b></p> <p>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.</p>	<p>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.</p>	● ●
15	<p><b>Other changes under "Polish deal" reform package</b></p> <p>Other key changes under the "Polish deal" legislation:</p> <ul style="list-style-type: none"> <li>▶ New tax requirements for business reorganizations</li> <li>▶ Changes to CIT tax grouping regime and possibility of VAT grouping</li> <li>▶ Extension of the Polish CFC regime expected to capture broader range of entities</li> <li>▶ New Polish holding company regime with exemptions</li> <li>▶ Investment agreement ("ruling 590") as a single agreement with the tax authorities for large investors</li> </ul>	<p>Analyze potential impact on the organization.</p>	● ● ●

Contact: [taxagenda@pl.ey.com](mailto:taxagenda@pl.ey.com)



## EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

© 2023 EYGM Limited.  
All Rights Reserved.  
EYG no. 006091-23Gbl  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal, or other professional advice. Please refer to your advisors for specific advice.

[ey.com](https://ey.com)

