

Poland's decree deferring certain provisions of new withholding tax reform enters into force

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

On 1 January 2019, the decree of Poland's Ministry of Finance providing for several provisions which limit or defer the application of selected amendments to the withholding tax (WHT) regime entered into force.¹

The key change proposed under the decree is that the obligation to collect WHT at the statutory rates of 19% or 20%, regardless of relief at source available under a tax treaty or domestic exemption based on the European Union directives, is deferred until the end of June 2019. However, other stringent elements of the reform are not subject to deferral and already apply as of 1 January 2019. That is, the Polish tax remitter is now obliged to exercise due diligence to determine if the payment recipient is eligible to benefit from relief at source. It is not sufficient to simply evaluate due diligence as the tax remitter must actually implement a certain procedure to demonstrate its application. The new, more rigid definition of the beneficial owner is also already in force. Additionally, it is expected that payments made during the first six months of 2019 will account for the PLN2m threshold for the whole of 2019, when a tax remitter making payments after the deferral period expires determines whether and to what extent the threshold for 2019 was exceeded or not.

According to the Ministry of Finance, the deferral should allow taxpayers to properly prepare for the new WHT regime. However, despite postponement, the tax authorities can now verify, during the six-month deferral period, whether new, more stringent requirements regarding WHT relief at source are complied with.

In view of that, although it might be perceived that the deferral provides additional time in terms of very specific obligations, it is crucial that taxpayers and tax remitters making cross-border payments analyze the impact of the new WHT regime on their tax position before the first payments become due.

Despite the key proposed change described above, the decree also provides for other amendments, which might be relevant for specific industries (below are several examples):

- ▶ The obligation to collect WHT at statutory rates is excluded for:
 - Interest or discount on bonds issued i.a. by the State Treasury and offered on foreign markets, earned by nonresidents
 - Payments to international organizations of which Poland is a member
 - Payments to entities exempt from corporate income tax in Poland based on explicit indication of their names in tax treaties concluded by Poland
- Payments for use or right to use industrial equipment, including means of transportation, commercial or scientific equipment, if certain conditions are met
- Certain payments to sea carriers, if certain conditions are met
- Certain payments to air carriers, if certain conditions are met
- ▶ Tax remitters (including custodians) should calculate the PLN2m threshold for a particular taxpayer separately for:
 - Payments arising under securities held on securities accounts/omnibus accounts
 - Other payments subject to WHT

While the decree introduces some amendments to the new WHT regime, it does not exempt tax remitters from compliance with fundamental, more stringent requirements, as of 1 January 2019.

Endnote

1. See EY Global Tax Alert, [Poland's Ministry of Finance publishes decree deferring certain provisions of its new withholding tax reform](#), dated 11 December 2018.

For additional information with respect to this Alert, please contact the following:

EY Doradztwo Podatkowe Krupa sp.k., Warsaw

- ▶ Andrzej Broda andrzej.broda@pl.ey.com
- ▶ Marcin Opilowski marcin.opilowski@pl.ey.com
- ▶ Michał Koper michal.koper@pl.ey.com
- ▶ Magdalena Piec magdalena.piec@pl.ey.com

EY Doradztwo Podatkowe Krupa sp.k., Wroclaw

- ▶ Sebastian Ickiewicz sebastian.ickiewicz@pl.ey.com

Ernst & Young LLP, Polish Tax Desk, New York

- ▶ Sylwia Migdał sylwia.migdal1@ey.com
- ▶ Joanna Pachnik joanna.pachnik1@ey.com

Ernst & Young LLP (United Kingdom), Polish Tax Desk, London

- ▶ Marta Kedziorska marta.kedziorska@uk.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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. For more information about our organization, please visit ey.com.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 012856-18Gbl

1508-1600216 NY
ED None

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

ey.com