

Poland's Ministry of Finance publishes draft guidance on Poland's withholding tax reform

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On 19 June 2019, Poland's Ministry of Finance issued draft guidance (the draft Guidance) explaining certain important details of the 2019 withholding tax (WHT) reform.¹ The draft Guidance should assist the foreign entities obtaining payments from Poland as well as the Polish tax remitters to re-evaluate their position with respect to WHT liabilities in Poland.

The draft Guidance discusses a variety of aspects, including:

- ▶ The deemed beneficial ownership requirement in double tax treaties that do not include such requirement explicitly
- ▶ The beneficial ownership requirement with respect to the European Union (EU) Parent-Subsidiary dividend exemption
- ▶ The possibility of a look-through approach
- ▶ The possibility to use a tax advisor's opinion letter to support the due diligence of the tax remitter and allow it not to withhold tax at source
- ▶ Other examples of due diligence with respect to verifying the right to a WHT exemption or lower rate
- ▶ Criteria to assess whether beneficial ownership with respect to entities such as holding entities and shared services centers

The Ministry of Finance will now accept public comments to the draft Guidance until 30 June 2018, after which the final version will be published.

As a brief reminder, the key changes under the WHT reform introduced as of 1 January 2019 include:

- ▶ The obligation to collect WHT at the statutory rates of 19% or 20%, regardless of relief available under a tax treaty or domestic exemption based on the EU directives (pay and refund system)
- ▶ A new, more rigid definition of the beneficial owner
- ▶ The Polish tax remitters' explicit obligation to exercise due diligence to determine if the payment recipient is eligible to benefit from relief at source

Under the Decree of 31 December 2018, some of the new requirements were deferred until the end of June 2019. While the Decree introduced amendments to the new WHT regime, it did not exempt tax remitters from compliance with more stringent requirements and due diligence as of 1 January 2019.

Taxpayers and tax remitters applying the rules presented in the draft Guidance should be treated as compliant with the new WHT laws.

Since the announced explanations may significantly impact international groups operating in Poland, tax and finance teams should assess the impact and assess their next steps in view of the explanations.

Endnote

1. See EY Global Tax Alert, [Poland's President signs 2019 tax reform including strict withholding tax regime](#), dated 19 November 2018.

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