Pragmatic
Solutions

THE POLISH DEAL

A NEW TAX REALITY

1 PERSONAL INCOME TAXATION AND EMPLOYEE MATTERS

The Polish Deal revolutionises personal income taxes (PIT). On the one hand, taxpayers will benefit from an increased tax-free amount but, on the other hand, the rules for calculating and deducting health insurance contributions will change. Many changes also apply to property owners and companies that are not CIT taxpayers.

01 Change of tax-free amount and tax thresholds

The tax-free amount will be increased to PLN 30,000 and will apply to all taxpayers who pay income tax according to the progressive tax rates. At present, the tax-free amount is decreasing and does not apply to people whose income exceeds PLN 127,000 per year.

The 32% rate will apply to income over PLN 120,000 per year. Currently, it applies to income above PLN 85,528.

02 Removing the possibility to deduct health insurance contributions from taxable income

Currently, health insurance contributions of 9% of the tax assessment basis are tax-deductible at a rate of 7.75% of the same tax basis. The reforms will remove the possibility to deduct health insurance contributions from personal income tax amounts.

To mitigate the effects of being unable to deduct health insurance contributions, employees and sole traders whose income is taxed at progressive tax rates will be entitled to apply the so-called middle class tax relief. However, this only applies to persons with an annual income below PLN 133,692.

03 New rules for calculating health insurance contributions by sole traders

The amount of health insurance contributions for those who pay tax according to the progressive tax scale remains unchanged at 9% of income.

The amount of health insurance contributions for sole traders who pay the 19% linear PIT rate will be 4.9% of income minus social security contributions (being not less, however, than 9% of the minimum wage).

For those who pay lump sum taxation on recorded income, the base for calculating 9% of the health insurance contribution will depend upon the taxpayer's average remuneration in the fourth quarter of the previous year and their annual income.

For taxpayers whose annual income is:

» up to PLN 60,000 – the contribution will be 60% of the average national wage (currently approx. PLN 300),

» up to PLN 300,000 – 100% of the average national wage (currently approx. PLN 500),

» over PLN 300,000 – 180% of the average national wage (currently approx. PLN 900).

The legislation also enables health insurance contribution rates to be calculated on the basis of income from the previous tax year for persons who conducted business activities taxed according to progressive tax rates or at a flat rate of 19%.

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03 → Throughout the year, health insurance contributions will be calculated progressively depending on the amount of income earned from the beginning of the year (i.e. 60%, then 100% then 180%). Accordingly, it may be necessary to make an annual contributions payment for months when a lower rate was applied than should have applied in light of the taxpayer's ultimate annual income amounts.

It will also be possible to apply for a refund of overpaid health insurance contributions within one month after the deadline for submitting a tax return.

Persons who do not obtain income from business activity, as defined in the Personal Income Tax Act (e.g. partners in limited partnerships) will pay a flat-rate health insurance contribution of 9% of their average monthly salary from the fourth quarter of the previous year.

The reforms also affect the deadlines for paying social and health insurance contributions. From 2022, such deadlines will be harmonized. Contributions for health and social insurance will be payable by the 20th day of the following month.

04 Health insurance contributions on salaries for appointments

The Polish Deal makes it compulsory to pay health insurance contributions on the remuneration of persons appointed to perform functions under an act of appointment (e.g. management board members or proxies).

To date, the obligation to pay health insurance contributions did not apply to such remuneration.

05 Relief for the protection of monuments

Owners or co-owners of real estate which is entered in the register of monuments or listed as a registered monument will be entitled to deduct part of the renovation expenses from their taxable income from 2022.

The tax relief applicable to the renovation of a monument will also apply to part of the costs of purchasing a historic property.

06 Relief after returning from emigration

Taxpayers who transfer their place of residence to Poland and become Polish tax residents will (after meeting certain conditions) be entitled to deduct an individually-determined amount from their annual tax payments for four subsequent tax years, starting from the end of the base year.

The base year will be the year selected by the taxpayer:

- in which he/she transferred their place of residence to Poland, or
- for another year.

The deductible amount will depend upon the amount of tax payable in the base year and the three subsequent years.

The deduction will be made in the tax return.

07 Lump sum on foreign income earned by so-called High Net Worth Individuals

The Polish Deal introduces a new form of lump sum taxation payable on foreign income earned by people who decide to transfer their tax residence to Poland.

Lump-sum taxation will apply to revenues obtained outside Poland (foreign revenues), excluding revenues obtained through so-called Controlled Foreign Companies (CFCs).

The lump sum amount is PLN 200,000, regardless of the amount of foreign revenue.

The possibility to use this form of taxation only applies if, in the relevant tax year, the taxpayer incurred at least PLN 100,000 in costs for economic growth, the development of science and education, the protection of cultural heritage or the promotion of physical culture.

It will be possible to apply the lump sum taxation method for 10 consecutive tax years.

08 Additional costs for employers who illegally hire employees

The planned reforms will attribute to an employer any income connected with the illegal employment of an employee or any failure to report the correct amount of income arising from an employment relationship. They will also make an employer fully liable for the related tax and social security contributions (while simultaneously excluding the employee's liability for these obligations).

09 Reforms affecting the use of cars

Taxing the sale of movables after leasing:

- The reforms will result increase the calculation of a taxpayer's income from business activities by the value of any revenue acquired from the post-leasing sale of cars and other movables purchased under an operating lease to private property.
- If a sole trader sells such property within 6 years from the original purchase date, the sale revenues will qualify as business income.

Depreciation of assets purchased prior to starting business:

- The proposed reforms assume that the basis for calculating the depreciation of a company's new asset will be its real value, taking into account its previous usage. The initial value of an asset used for private purposes before being entered into the records of a company's fixed assets and intangible assets is determined as its purchase price or its market value if this is lower than the purchase price.

10 Reforms affected leased buildings and residential premises (applicable from 2023)

Changes in the depreciation rates of buildings and residential premises:

- The new regulations exclude the possibility of applying depreciation rules to residential real estate and rights. This means that, as of 2022, it will not be possible to include depreciation write-offs on buildings and residential premises as tax costs.

Change in taxation rules for income from rental or lease:

- Revenues from renting, subletting, leasing or subleasing and other contracts of a similar nature are – unless they are obtained as part of business activity – subject to lump sum taxation based on the amount of recorded income. The lump sum payable on such income remains unchanged at 8.5% of revenues in respect of the first PLN 100,000 and 12.5% of revenues from any higher income amounts.
- To date, lump sum taxation on recorded income was an optional form of taxation, whereas the default form of taxation was the generally-applicable progressive tax scale.

11 Reformed regulations on flat-rate personal taxation and liquidation of the tax card

The reforms reduce some lump sum rates on recorded income, primarily for people working in medical and technical professions.

Income derived from providing healthcare services will be taxed at a uniform 14% flat rate regardless of whether such services are provided in person or via employees. Income derived from providing technical services will be taxed likewise. Currently, such income can be taxed at two lump sum rates, namely 17% or 15%, depending on whether they are earned personally or via employees.

The reforms would create an additional, lower flat rate of 12% applicable to income earned from providing certain IT services that are currently taxed at 15%.

12 Tax abolition

The Polish Deal introduces a completely new legal institution, namely a voluntary income tax payable on income derived from sources that have not been declared for taxation in Poland.

The tax is temporary. Any entities interested in disclosing previously untaxed income to the Polish tax authorities will be able to do so until the end of 2022.

The transitional lump sum will be 8% of the tax base.

After paying the tax, it will be possible to use an additional tax deduction of 30% of the lump sum if, within one year of submitting the application, the taxpayer invests at least the equivalent amount of the declared income into *inter alia* fixed assets, shares or stocks which generate income that is taxable in Poland.

It is necessary to pay for an application to apply the transitional lump sum tax. The fee is 1% of the reported income, capped at a maximum of PLN 30,000. Before submitting an application, it will be possible to ask the newly-created Council for Capital Repatriation to issue an opinion on the impact of applying the lump sum tax. The fee payable to receive the Council's opinion is PLN 50,000, so this is a solution which seems suitable only for entities whose undisclosed income is very high.

13 Changes to the taxation of partnerships that are not CIT taxpayers

The Polish Deal changes the classification and taxation payable on revenues earned from reducing capital participation in a partnership (not being a CIT taxpayer), receiving property in connection with the liquidation of such a partnership and the withdrawal of a partner from such a partnership.

Revenues from non-agricultural business activities will include revenues derived from reducing a shareholder's capital contribution in the form of:

- cash (any "retained profits" in the partnership, proportionate to such shares, will not be taxed, but such sums shall be reduced by the value of any payments made in connection with these shares and any expenses which do not constitute tax-deductible costs); and
- assets other than shares, stocks, securities, participation units in capital funds and derivative financial instruments, and also any assets in respect of which Poland loses the right to tax them if they are sold after 6 years.

If a partner of a partnership receives shares, securities, participation titles in capital funds or derivative financial instruments due to the liquidation of the partnership, this will not be subject to taxation but any income earned from the possible disposal thereof will be taxable in Poland.

If, following a partner's withdrawal from a partnership, or its liquidation or a reduction in its share capital, a partner is issued with assets and Poland is unable to tax any income earned from the disposal of such assets when they are received, the partner is deemed to have generated income which is credited as "money capital". The 19% lump sum tax applies to any income which is above the market value of the received assets over costs (e.g. for their purchase or production) incurred by the partnership or partner.

The cost of obtaining income from the sale of shares (stocks) in a partnership resulting from the transformation of a company that is not a legal person:

- The current regulations contain no specific rules to determine the value of tax-deductible costs in connection with income derived from selling the shares of a limited company established as a result of the transformation of a partnership.
- The Polish Deal regulates this issue by stating that costs incurred by a partner for acquiring or subscribing to the right to acquire shares in a partnership transformed into a limited company will qualify as tax-deductible costs. Such costs will be increased by any "retained profits" attributable to that partner, but decreased by any payments made to the partner as a share of the company's profits.

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TAXATION OF COMPANIES

A range of tax benefits, but also new taxes which apply to legal persons. The Polish Deal introduces many changes and new solutions that will apply to most CIT-paying entrepreneurs.

01 Tax relief for socially beneficial expenses

From 2022, socially beneficial activities conducted by CIT taxpayers can benefit from a special tax relief.

This relief will allow the taxpayer's tax base to be reduced by 50% of the value of costs incurred by the taxpayer on sports and cultural activities, or activities which support higher education and science. The reduced amount must be lower than the value of operating income in the given tax year.

02 Taxation of holding companies

The Polish Deal creates a preferential CIT taxation system for entities performing holding functions.

Holding companies based in Poland will, provided that they fulfil certain statutory requirements, only pay 5% income tax on dividends obtained from their subsidiaries (i.e. 95% of the amount of dividends obtained will not be subject to CIT).

Additionally, any income earned by holding companies from selling shares (stocks) in their subsidiaries will be fully exempt from income tax, provided that the following conditions are jointly fulfilled:

» the holding company holds at least 10% of the subsidiary's shares for a period exceeding one year,

» the buyer of the shares/stocks is an unrelated entity,

» the company whose shares or stocks are sold is not a so-called real estate company,

» the seller submits an appropriate declaration to the tax authority.

03 Facilitating the creation of tax capital groups

The Polish Deal introduces changes to simplify the possibility of a parent company and its subsidiaries operating as a Tax Capital Group (TCG).

The average value of share capital of the companies forming part of a TCG was reduced from PLN 500,000 to PLN 250,000.

The prohibition on the existence of mutual connections between the subsidiaries within the TCG has been removed.

It is no longer necessary for the contract establishing the TCG to be concluded as a notarial deed – ordinary written form suffices.

It will be possible to restructure activities within the TCG without losing TCG status.

It will no longer be necessary for the TCG to maintain an appropriate level of profitability (the ratio of the TCG's turnover to income).

It will be possible to reduce the TCG's taxable income by the value of any losses incurred by the TCG's member companies in the period prior to the TCG's establishment.

04 Estonian CIT – new principles

The Polish Deal introduces changes to simplify the possibility of capital companies to take advantage of lump sum taxation (so-called Estonian CIT).

The range of entities entitled to use the Estonian CIT regime will be extended to include limited partnerships and limited joint-stock partnerships.

The obligation to incur capital expenditures will be abolished.

Maximum income levels will no longer limit a taxpayer's ability to use the Estonian CIT regime. To date, only taxpayers with an income not exceeding PLN 100 million could use this regime.

The flat-rate tax rates will be lowered to 10% for small taxpayers and 20% for other taxpayers.

Changes are made to the lump sum amount which can be deducted from the income of a partner in a company using the Estonian CIT regime. From 1 January 2022, it will be possible to deduct 90% (in respect of payments made by small taxpayers) or 70% (in respect of payments made by others) of the amount of flat-rate tax previously paid by the company.

05 Changes in withholding tax (WHT)

The general rules applicable to exemptions from withholding tax or lower withholding tax rates will apply only to payments which do not exceed PLN 2 million per year to a single recipient.

If this threshold is exceeded, the payer will be required to collect withholding tax at the statutory basic rate (19%/20%), and will then be entitled to apply for a reimbursement thereof (the pay-and-refund procedure).

Payments to unrelated entities or to domestic entities and payments for the provision of intangible services will be excluded from the pay-and-refund procedure.

The range of situations entitling a taxpayer to apply for an opinion on whether the exemption applies will be extended to include the provisions of agreements to avoid double taxation.

06 Taxation of buildings and residential premises – new principles

From 1 January 2023, tax depreciation cannot be applied to buildings and residential premises.

Costs incurred to purchase or construct such properties only become tax deductible when they are disposed of in exchange for payment.

07 Limited real estate tax depreciation for real estate companies

The Polish Deal introduces restrictions on the ability of so-called real estate companies to apply tax depreciation to real estate.

Tax depreciations applied to real estate by real estate companies may not exceed the value of depreciation or amortization write-offs made in accordance with accounting regulations.

08 Changes to the deduction of debt financing costs

Any excess of a taxpayer's debt financing costs may be recognized as tax-deductible costs up to a maximum of PLN 3 million or 30% of the tax EBITDA. To date, the prevailing interpretation of the existing rules on this issue meant that such costs were tax-deductible if they did not exceed PLN 3 million and 30% of tax EBITDA.

It will also not be possible to classify as tax costs any interest payable on debt financing obtained from related entities and used to finance capital transactions, such as the purchase of shares or to increase the subsidiary's share capital.

09 Expanding the range of CFC entities

The Polish Deal extends the application of the provisions on taxing Controlled Foreign Companies.

The new provisions state that the concept of Controlled Foreign Companies shall also include entities in which a taxpayer owns – independently, jointly with related entities or with other taxpayers residing or having a registered office or management board in Poland – directly or indirectly over 50% of the share capital or more than 50% of the voting rights in the entity's management. The "other taxpayers" referred to above are those which own at least 25% of the share capital, or at least 25% of the voting rights in the company's management, or 25% of the rights to participate in the company's profits.

The definition of passive revenues is also expanded, which influences the qualification of a foreign entity as a CFC. Such revenues include benefits received in consideration of so-called intangible services.

The range of Controlled Foreign Companies is also expanded to include entities which do not exceed the threshold of 33% of passive revenues, provided that certain conditions (specified in the draft legislation) are fulfilled regarding the gross/net income of the relevant entities.

There is an increased threshold of effective taxation which must apply to a foreign entity before it can avoid being categorised as a CFC. The new rules stipulate that the effective taxation of a foreign entity may not be lower than 14.25% (to date, this threshold was set at 9%).

Additionally, the draft legislation will introduce two additional categories of Controlled Foreign Companies:

- entities whose passive income is lower than 30% of the total value of the classes of assets it holds (inc. shares, stocks, real estate, intangible assets), if such assets constitute at least 50% of the total value of the foreign entity's assets;
- entities that achieve excessively high rates of return on their assets.

10 Tax on so-called shifted income

From 1 January 2023, the Polish Deal introduces a new tax on so-called shifted income for CIT taxpayers who incur (directly or indirectly, for the benefit of foreign related entities) expenses for intangible services (e.g. advisory services, market research, advertising, management, data processing), licensing fees or debt financing costs, and:

- such expenses constituted (i) at least 50% of the value of gross income obtained by the foreign related entity, and (ii) at least 3% of the total sum of expenses of the taxpayer paying the receivable, which were classified as tax costs, regardless of the form.
- the income tax actually paid by the foreign related entity for the year in which it received the receivable for expenses is lower by at least 25% than the amount of income tax that would be paid in connection with the Expenses under Polish law.

11 Excluding so-called hidden dividends as costs

The Polish Deal prevents benefits received by a beneficiary who is a partner or an entity related to a company or one of its partners (so-called hidden dividends) from qualifying as tax-deductible costs.

Such exclusion applies if:

- the service was not provided on an arm's-length basis;
- the amount of costs or the date on which they were incurred are in any way dependent upon the company achieving a profit or a certain amount of profit;
- these costs include remuneration for the right to use the assets owned/jointly owned by the partner or an entity related to the partner before the taxpayer was established.

The exemption does not apply if the total costs incurred as hidden dividends in a tax year is lower than the amount of gross profit obtained in the financial year in which those costs were included in the company's financial report.

According to the current version of the draft reform package, the provisions on hidden dividends will enter into force on 1 January 2023.

12 Restructuring activities

The Polish Deal significantly limits the availability of tax neutrality during restructuring processes.

The new rules limit the tax neutrality of any exchange of shares/mergers/divisions to one single reorganization. Any subsequent restructuring activities involving the same shares/stocks will be taxable.

Additionally, the new provisions enable the tax neutrality of divisions/mergers only if all of the following conditions are fulfilled:

» the value of the shares/stocks allocated by the acquiring company or by the newly formed company does not exceed the value of the shares/stocks in the acquired or divided company that would have been acquired by the relevant partner for tax purposes if no merger or division had occurred;

» the value of the assets taken-over for tax purposes by the acquiring company does not differ from the value resulting from the tax books of the acquired or divided entity.

The new provisions will also result in the taxation of mergers between limited liability companies and partnerships.

13 Minimum tax (the so-called tax on gross income)

The New Deal introduces a 10% tax which is payable by taxpayers that (i) incurred losses in their operating activities or (ii) earned a net income from operational activities which did not exceed 1% of gross income from operational activities

The tax on gross income will not apply *inter alia* to:

» so-called flat structures – i.e. companies having no shares or other rights to participate in the profits of other entities and whose partners are all natural persons;

» taxpayers starting a business – in the tax year of commencing the business and for the following two tax years (except for taxpayers which come into existence as a result of a restructuring process);

» finance companies;

» taxpayers who earned gross income of at least 30% lower than that obtained in the previous tax year,

» entities belonging to a group comprising at least two companies, in which one company has a direct 75% share in the share capital, stock capital or equity capital of other companies within the same group if the share of the total income of these companies in their total this gross income exceeds 1%.

3 TAX RELIEF OPTIONS FOR INNOVATIVE ENTERPRISES

The Polish Deal creates a number of new tax relief options for innovative enterprises and reforms certain existing reliefs and exemptions. The changes will apply from 2022.

01 Venture capital tax relief

This is to encourage PIT taxpayers to invest, especially in start-ups, with the help of venture capital funds.

The New Deal enables a taxpayer to reduce their tax base by deducting 50% of the costs incurred to acquire shares in an Alternative Investment Company (AIC) or a company in which an ACI holds at least 5% of shares.

To be eligible, the taxpayer must have owned the relevant shares for at least 2 years.

The maximum deductible amount in any tax year is PLN 250,000. If the shares are sold sooner, the taxpayer who made the deduction will be obliged to add the previously-deducted amounts to their income for the tax year in which the sale of shares occurred.

The relief applies only to publicly-financed funds (in practice, this means funds falling within one of the PFR Ventures programs or within the NCBiR – Bridge Alfa programs).

02 Tax relief for innovative employees

Entrepreneurs who conduct research and development (R&D) and employ employees will, as tax remitters, be entitled to deduct from PIT advances (due from employees and payable to the tax office) any eligible costs of R&D activities which the taxpayer has not deducted as part of R&D tax relief (e.g. because he/she made a loss or the amount of income was lower than the amount of deductions).

Currently, entities that have incurred a loss or achieved income lower than the amount to be settled within the R&D tax relief incentive are entitled to a refund of the amount of non-deducted eligible costs. However, only a limited range of entities can take advantage of this.

The deduction will apply to persons hired on the basis of an employment contract, a mandate contract or a contract to create a specified work. Such person must spend at least 50% of their monthly working time in providing R&D services.

The deduction is unavailable to taxpayers which exercise the right to receive a cash refund as part of the R&D tax relief incentive.

03 Changes to R&D tax relief

R&D centres will be entitled to deduct, from their tax base for R&D services, 200% of their eligible costs of R&D tax relief (currently, they can deduct 150%).

Moreover, all taxpayers will be entitled to deduct 200% of their personnel costs incurred for so-called R&D employees (currently, they can deduct 100%).

04 Tax relief for prototypes

Taxpayers who produce a new product based on their R&D will be entitled to reduce their tax base by deducting the costs related to the product's trial production and placing it on the market.

The deduction is limited to 30% of the costs incurred and cannot exceed 10% of the taxpayer's net income.

Such expenses will be disclosed in the annual return in the tax year in which they are incurred, and it will be possible for the deduction to take place over the subsequent six years.

The new provisions define what is meant by "trial production of a new product" and the "costs of placing a new product on the market".

05 Tax relief for expansion

CIT and PIT taxpayers will be entitled to reduce their tax base, for the second time, by deducting 100% of the costs spent on increasing their revenues from the sale of products.

To be eligible to make such a deduction, it must be shown that the taxpayer achieved an increase in sales revenues for 2 consecutive years from the year in which the relevant costs were incurred.

The maximum deduction amount is capped at PLN 1 million.

06 Consolidation tax relief

Taxpayers who incur eligible expenses (including legal advisory services, court and stamp fees) to acquire foreign or domestic shares or stocks in a capital company will be entitled, for a second time, to deduct them from their tax base.

The maximum deduction amount is capped at PLN 250,000.

To be eligible to make such a deduction, it must be shown that the company whose shares will be acquired is a legal person with its seat or management board in a country with which Poland has concluded a binding double-taxation avoidance agreement. The company's main activity must be the same as that of the taxpayer which acquired its shares, or the company's activity can rationally be considered as supporting the taxpayer's own activities.

07 Tax relief for robotization

Taxpayers which undertake production activities will be entitled to reduce their tax base by deducting costs, previously included as tax-deductible costs, related to the automation of workstations with the use of robots – i.e. machines which imitate human movements.

Eligible costs will include expenses for robots, peripheral devices and related intangibles (including lease agreements), plus any training costs.

The amount deducted cannot exceed 50% of the actual cost.

08 Tax Relief for Initial Public Offerings (POP/IPO)

CIT taxpayers who decide to begin trading their shares on the stock exchange will be entitled to deduct 150% of the related costs, such as the costs of preparing a prospectus or the stock exchange fees.

Additionally, issuers will be able to reduce their tax base by 50% of any costs (excluding VAT) incurred for legal and financial advisory services, up to a maximum of PLN 50,000.

PIT taxpayers will be exempt from taxation of income obtained from selling shares acquired during an IPO, provided that the shares are sold after 3 years from the date on which they were first admitted to trading on a regulated market or alternative trading system.

This exemption also applies if shares are disposed of by way of an inheritance.

The exemption does not apply if the shares sold are those of a company which was a related entity to the taxpayer (or the taxpayer's testator) during the two years preceding the date on which the taxpayer or testator, as appropriate, subscribed to or acquired such shares.

09 Simultaneous tax relief (R&D + IP Box)

Taxpayers who earn income from eligible IP rights and apply the preferential 5% tax rate will simultaneously be entitled to utilise R&D tax relief.

Deductible cost are those which resulted in the creation, development or improvement of an eligible IP right whose commercialization generates income for the taxpayer.

Currently, R&D tax relief is not taken into account when calculating the tax base to which the IP Box preferential 5% tax rate applies. It is not possible to apply the R&D tax relief and the preferential IP Box rate simultaneously to the same income. Taxpayers are entitled to use both tax relief regimes in the same tax year, but only if they are applied to different categories of income.

10 Changes affecting SEZs/PSIs

Entrepreneurs are limited in their ability to benefit from a tax exemption for businesses operating pursuant to a Support Decision (SD). The exemption applies to income arising "from the implementation of a new investment" and "in the area specified in the SD". Although the Polish Deal's explanatory notes indicate that this is intended to be a clarificatory reform, it may encourage the authorities to apply a so-called project approach – i.e. limiting the exemption solely to income derived from new elements of an investment. This would particularly affect entrepreneurs who undertake projects to reinvest in already-existing infrastructure, which currently represents the vast majority of projects implemented by investors within the Polish Investment Zones (PIZ) regime. This corresponds to reforms introduced in the Support of New Investments Act, according to which an SD should only contain PKWiU codes related to a new investment. Moreover, as currently drafted, the new provisions do not differentiate between SDs issued before or after the Polish Deal's entry into force, which would result in such an approach being applied to previously-issued Support Decisions.

It will be prohibited to change a Support Decision issued within the PIZ regime so as to reduce the employment level by more than 20%.

The small anti-abuse clause is clarified by expanding the range of unlawful activities to include ones beyond the conclusion of a contract based on artificial factual activities. Additionally, an infringement of the anti-abuse clause is deemed to be a reason for withdrawing a permit to operate within the SEZ or SD regimes.

It excludes from the scope of a new investment's eligible costs any expenditure on fixed assets which benefit the taxpayer's personal circumstances, including cars.

It adds a definition of the "commencement of works" in order to unify the currently inconsistent jurisprudence of the tax authorities.

It limits the possibility to amend a permit to operate in a SEZ or a SD. They cannot be changed so as to increase eligible costs or reduce employment by more than 20%.

4 CHANGES TO TP

The Polish Deal introduces a number of changes to the laws on transfer pricing. Such changes seek to simplify and insulate the system. Below is a discussion of selected changes in this area.

01 Extended list of documentation exemptions

It will abolish the requirement to prepare certain local transfer pricing documents, such as: re-invoicing and safe harbour transactions concerning finance and low value-added services.

02 Easing the terms of transfer pricing adjustments

It will abolish the obligation to declare any transfer pricing adjustment in the annual tax declaration. It also allows negative adjustments to be made if the taxpayer has received an accounting document from a related entity to confirm that a transfer pricing adjustment was made in a specified amount.

03 No obligation to prepare comparative and compliance analyses

It will be possible to avoid the need to prepare a comparative analysis (compliance analysis) for transactions which are:

- controlled – i.e. concluded by taxpayers who are micro-/small – entrepreneurs (but such taxpayers are still obliged to confirm the arm's-length nature of the applicable prices);
- non-controlled transactions entered into with entities from tax havens (or if the beneficial owner of such an entity is from a tax haven).

04 Extended deadlines

The deadline will be extended for:

- preparing transfer pricing documentation: until the end of the 10th month after the end of the tax year;
- submitting transfer pricing information: until the end of the 11th month after the end of the tax year,
- submitting transfer pricing documentation as requested by the tax authority: from 7 to 14 days.

05 Transferring the market declaration to the TPR form

As part of the planned reforms, the declaration will constitute a new element of the TPR-C or TPR-P form, and so will not be submitted as a separate document.

To date, a related entity has been required to submit, as a separate document, a declaration on the preparation of local transfer pricing documentation based on the arm's-length nature of the prices mentioned therein.

06 Exemption from the obligation to submit ORD-U

An exemption from the duty for taxpayers or non-legal entities to submit information (the ORD-U form) regarding agreements concluded with non-residents will apply to taxpayers who are also required to submit TPR information and who do not conclude transactions with contractors from tax havens.

07 Stricter requirements for signing TPR

Changes are made to narrow range of people authorized to sign the TPR.

The new provisions will require the TPR to be signed by a company's entire management board or by a designated member of the management board; merely appointing a designated member will not release other management board members from any liability arising from a failure to submit the TPR.

Additionally, it will not be permitted for a proxy to sign the TPR, unless the proxy is an attorney-at-law, legal advisor, tax advisor or statutory auditor.

08 New KKS sanction regarding transfer pricing documentation

A completely new KKS sanction is created for failure to prepare local or group transfer pricing documentation. Additionally, this sanction will apply if the documentation was prepared inaccurately.

09 Clarification of existing provisions

The wording of certain current provisions is clarified, particularly as regards:

- Verifying the accuracy of interest rate levels in order comply with the conditions for using the safe harbour approach to financial transactions;
- Valuing transactions within the scope of deposit agreements, the articles of association of entities which lack legal personality or joint venture contracts;
- Abolishing the duty to appoint a partner of the company who, not being a legal person, is obliged to submit information on transfer prices applicable to the company;
- Identifying data sources used to prepare transfer pricing information.

5 TP – TAX HAVENS

The Polish Deal also introduces a new obligation to authenticate contractual counterparties. From 2022, taxpayers will need to check whether their counterparties make settlements with entities from so-called tax havens, and who is their so-called beneficial owner.

01 Tax Haven Due Diligence

As of 2022, taxpayers will, for the first time, be required to exercise due diligence in authenticating their contractual counterparties in respect of transactions conducted in 2021. They will be required to determine:

- whether these contractors have made any settlements with entities from tax havens;
- who appears in the transaction chain as their beneficial owner.

This obligation will apply to all CIT and PIT taxpayers whose total transaction values exceed the threshold of PLN 500,000 per year.

The verification obligation applies to both related and unrelated counterparties, domestic and foreign.

A statutory presumption is created, according to which the beneficial owner is assumed to be an entity from a tax haven if the contractor has made any settlements in a tax haven.

Unless this statutory presumption is rebutted, there will be a duty to prepare local transfer pricing documentation.

The contracting companies' management boards will be obliged to sign and submit to the tax authorities a special declaration on preparing complete transfer pricing documentation (which previously applied only to significant intra-group transactions). Failure to do so can result in a penalty fine being imposed, up to a maximum of approx. PLN 25 million.

Companies will be required to report such transactions to the Head of the National Tax Administration using the TPR-C form, which is used to select taxpayers for a tax inspection.

The tax authorities may impose a fine of 10-30% of additional tax liability in the event of a negative finding during a tax inspection.

6 CHANGES TO VAT

The Polish Deal introduces a series of changes to VAT payments, including the possibility to create "VAT groups", guaranteeing tax neutrality between group entities, support for entrepreneurs who make non-cash settlements and limitations on cash turnover.

01 Option to apply VAT tax to financial services

The Polish Deal makes it possible to pay VAT on financial services which have, in principle, been tax exempt until now.

To date, entities from the financial industry have been unable to deduct input tax on the purchase of goods or services. This resulted in them incurring the VAT burden.

The new provisions allow a company to opt to apply VAT to financial services, which will enable improved cash-flow as part of business activities and facilitate real savings. However, it should be remembered that the option to apply VAT must then be applied to all – and not merely some – of the financial services provided to taxpayers.

Importantly, the option to apply VAT on financial services can only apply to B2B transactions. Trade with natural persons cannot benefit from this taxation option.

The taxpayer's choice to apply VAT will be binding for a minimum of two years, after which the taxpayer will be entitled to again apply the VAT exemption.

The proposed provisions enable the option to apply VAT on the following services:

» Transactions, including brokerage for transactions dealing in currencies, bank notes and coins used as legal tender;

» Fund management;

» The provision of credit or cash loans and intermediaries in credit or loan services, and the management of credit or cash loans by a creditor or lender;

» Sureties, guarantees and any other security related to financial and insurance transactions, plus the brokerage of such services and the management of credit guarantees by a creditor or lender;

» Cash deposit services, maintenance of cash accounts, all kinds of payment transactions, money orders, debts, checks and bills of exchange, plus the brokerage of such services;

» Services involving shares in companies or other entities with legal personality, plus the brokerage of such services;

» Services regarding financial instruments and related brokerage services.

It is crucial to take steps to analyse the profitability of ceasing to apply the tax exemption and then, if this seems to result in positive results, to take steps to implement a new structure by changing the manner of circulating documents in your company, introducing new accounting procedures and preparing employees new realities.

02 Creating VAT Groups

An important change arising from the Polish Deal package enables taxpayers to group themselves into so-called VAT groups.

This institution is known for many years, especially in the countries of "Old Europe". It enables a group of related VAT payers to be treated as a single taxpayer for the purposes of external transactions – entities belonging to one VAT group become one taxpayer. This results in tax neutrality within the VAT Group itself.

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02 → The Polish Deal allows VAT Groups to be formed by Polish entities (including foreign taxpayers which operate in Poland via branches) that are financially, economically and organizationally interrelated throughout the duration of the VAT Group.

- Financial connections: defined as one of the entities within the VAT group directly owning over 50% of the shares (stocks) in the share capital or over 50% of the voting rights in the controlling, constitutive or managing organs, or over 50% of the participation rights in profit, of the other taxpayers which are members of the group.
- Economic links: should be understood as being analogous to the main activity, but also as coherence – i.e. the complementarity and interdependence of the activities carried out or conducting activities entirely or largely used by members of the group.
- Organizational ties: the entities that make up the group – legally or factually, directly or indirectly – have a joint management or organize their activities wholly or partially in concert.

The members of a VAT group have many opportunities regarding cash-flow optimization, as intra-group transactions are not subject to VAT, which helps to avoid depleting the members' company accounts.

It is worth remembering, however, that VAT group members will be jointly and severally liable (including after the group ceases to function) for its VAT liabilities due for the period in which the group existed.

03 Limits on cash turnover

The new legislation will enable the acquisition of so-called Non-Cash Taxpayer status. Such taxpayers can benefit from the VAT refund period being shortened to 15 days.

The speedier VAT-refund status can be acquired by taxpayers in respect of which:

- at least 80% of sales have been registered using cash registers which enable the connection and transfer of data between the cash register and the Central Repository of Cash Registers (CRK) – online and virtual cash registers;
- at least 80% of sales recorded using cash registers were paid using payment instruments, including credit transfer services.

Additionally, the Ministry of Finance has explained that, in order to receive an accelerated VAT refund, certain other conditions must be met:

- for the previous 12 months, the total value of sales, including tax, recorded with the use of cash registers may not be lower than PLN 50,000 per accounting period;
- the surplus amount of input tax over tax payable which was not settled in previous accounting periods and shown in the current declaration cannot exceed PLN 3,000;
- the VAT refund amount may not exceed twice the tax resulting from sales recorded with the use of cash registers within a given settlement period;
- within the previous 12 months the taxpayer must be registered as an active VAT payer, submit declarations and keep sales records using only cash registers which enable the connection and transfer of data to the CRK;
- the taxpayer must have an account which is disclosed in the so-called "White List".

The legislation cross-refers to the provisions of the Payment Services Act, listing instruments such as cards, mobile payments or credit transfers.

In addition to the accelerated VAT refund privilege, the legislation will lower the limits for executing cash transactions to:

- PLN 8,000 for transactions between entrepreneurs (B2B);
- PLN 20,000 for transactions between an entrepreneur and customer (B2C).

7

AMENDMENTS TO THE TAX ORDINANCE AND OTHER ENACTMENTS

The provisions forming part of the Polish Deal will reform many pieces of legislation, including the Tax Ordinance. The draft includes *inter alia* provisions on new legal institutions, such as investment agreements and enables the temporary seizure of real estate as part of enforcement proceedings.

01 Investment agreements

This new legal institution will enable investors (i.e. entities which plan or conduct investments within the territory of the Republic of Poland) to become aware of the tax consequences of an investment.

Investment agreements will be concluded between the Minister of Finance and a particular investor, provided that the value of the investment is at least PLN 100 million (PLN 50 million from 2025). Prior to concluding such contract, it will be possible to conduct a conciliation procedure.

A group of investors may also submit an application to conclude an investment, especially a consortium, company, branch or representative office established in connection with the investment.

The application may be submitted in English, and the agreement itself will be drawn up in Polish and English (the Polish version will be decisive).

This new legal institution aims to increase certainty regarding the tax consequences of a planned investment.

The scope of an investment agreement will depend upon the arrangements between the investor and the Minister of Finance. In principle, this institution is to "replace":

» a prior unilateral pricing agreement;

» a protective opinion;

» binding excise information;

» binding information about applicable VAT rates;

» individual tax interpretations.

An investment agreement will, during its term, be binding on both the investor and the tax authorities, provided that the subject of the agreement is not an activity which is declared to be an abuse of VAT law.

The agreement will be valid a stated period, not exceeding 5 tax years.

The conclusion of an investment agreement is subject to a fee. First, each investor must pay an initial fee of PLN 50,000 within 30 days from the date of submitting the application to conclude the agreement.

After the investment agreement is concluded (similarly within 30 days), is necessary to pay the main fee of PLN 100,000 to 500,000. The fee amount depends *inter alia* upon the investment's declared value and its complexity. The fee is payable within 30 days from the date of the contract.

Records of entities that have concluded investment agreements will be public and available on the Ministry of Finance's website.

02 Declaration corrections and fiscal penal liability

The Polish Deal also introduces a long-awaited change regarding the consequences of submitting corrections to JPK files, meaning that the submission of a proper correction of the company's books (the registered part of the JPK_VAT file) will be treated the same, insofar as avoiding fiscal criminal liability, as the submission of a corrected declaration.

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02 → This benefit will not apply to either corrections submitted in relation to the registered part of a company's books or declarations (not only the JKP_VAT file), if fiscal criminal proceedings were initiated before the correction was submitted .

03 Temporary seizure of movable property

The Polish Order will also introduce a new legal institution to enforcement proceedings, namely the temporary seizure of movable property.

Reforms of the Administration Enforcement Proceedings Act provide that if, in the course of a customs and fiscal inspection, the investigating officer finds that administrative enforcement proceedings are underway against the inspected entity, the officer will be entitled to temporarily seize movable property (e.g. machines, vehicles, equipment).

After temporarily seizing the movable property, the Director of the customs and tax office will be entitled for a defined period, not exceeding 96 hours from the time of signing the relevant protocol, to dispose of the seized property.

It will be possible to temporarily seize movable property if the writs of execution which authorise the enforcement concern cash receivables with a total value exceeding PLN 10,000 as the primary amount, not taking into account any interest for late payment, the costs of issuing demands for payment or any enforcement costs.

When seizing the movable property, the Director of the customs and tax office will double-confirm the existence and amount of debt owed by the inspected entity.

If it is confirmed that the debt still exists, and the tax authority considers that no one of the conditions stipulated in the new provisions apply, an order to temporarily seize the movable property will be issued and the temporary seizure will become an enforcement seizure. This decision is subject to appeal.

If, conversely, the inspected entity settles the debt it owes, the authority will issue a decision refusing to approve the temporary seizure of the movable property.

If, following the temporary seizure of movable property, the inspected entity disposes of such property, such disposal will be ineffective if the authority approves the temporary seizure of the movable property.

It will not be possible to temporarily seize movable property if:

- the tax inspector provides the officer with evidence confirming that the debt has been paid, or written-off, or expired or that debt obligation does not actually exist, or that the performance date of the obligation has been delayed, or that it has been agreed to make payment in installments (deferment);
- the movable property in question is excluded or exempt from administrative enforcement proceedings for the reasons described in the Enforcement Proceedings Act;
- the seizure would apply to money, perishable movable property or animals;
- the seizure would apply to movable property which has a value significantly greater than the amount required to satisfy the debt to which the enforcement proceedings relate.

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