

TAX NEWSLETTER

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SUMMARY

- **CIT:** Ministry of finance bill to change the corporate income tax act ("CIT")
Amendment to the regulation on the definition of countries and territories applying harmful tax competition
New act on payment periods in commercial transactions
- **Tax ordinance:** Planned changes in the tax ordinance
- **VAT:** introduction of joint and several liability in the area of VAT

INTRODUCTION

Dear Sirs,

Some significant changes in the CIT Act and Tax Ordinance have been announced recently. In the below articles you will find a description of major changes planned, including changes regarding the tax treatment of limited partnerships and partnerships limited by shares, taxation of income of controlled foreign corporations in Poland and issue of tax interpretations, etc. We will follow on a day-to-day basis the legislative process and we will keep you informed about the resulting range of changes.

We would also like to draw your attention to changes in the VAT Act which introduce joint liability in the trade of sensitive goods – fuel, steel bars and gold. These changes are to become effective this year in October.

Enjoy your reading!

Yours sincerely,
Krystyna Szydłowska

CIT:

- Ministry of finance bill to change the corporate income tax act ("CIT")

A few days ago the bill to amend the Corporate Income Tax Act introduced by the Ministry of Finance entered the stage of cross-ministerial consultations. Among many changes proposed in the bill we would like to focus on two regulations concerning: (1) tax treatment of limited partnerships (S.K.) and partnerships limited by shares (S.K.A.) and (2) tax treatment of income earned by Controlled Foreign Corporations (CFC) in Poland. In the next issues of our Tax newsletter we will keep you informed about the developments of the legislative process and any potential changes in tax laws.

- Taxation of income of limited partnerships and partnerships limited by shares

As part of proposed changes in the CIT Act the Ministry of Finance suggests postponing the date of entry into force of regulations amending the tax treatment for limited partnerships. According to this bill limited partnerships will not become CIT payers before 1 January 2015, which will enable them to smoothly adapt the form of business to the changing legal status.

Then, in the case of partnerships limited by shares the legislator proposes to introduce a regulation implying that, for a partnership limited by shares established before 1 January 2013 and using a non- calendar year, changes in taxation rules will apply from the first day of this partnership's financial year starting after 31 December 2013. However, partnerships limited by shares established in 2013 and having a financial year ending after 31 December 2013 or established

before 2013, (but changing their financial year in 2013 where the first year following this change ends after 31 December 2013) will be subject to taxation under the new rules from 1 January 2014, while being obliged to close their books and prepare their financial statements as at 31 December 2013.

- Taxation of income of controlled foreign corporations in Poland

In accordance with the proposed regulations the income earned by CFC outside of Poland are to be assigned to a domestic parent entity (which controls CFC) and subject to CIT in Poland. In this case the tax basis of the Polish entity would be increased by the corresponding part of income earned by CFC. It should be noted that the fact whether the foreign corporation distributed and paid the profits or not is irrelevant in this case.

For a given entity to be recognized as CFC, minimum half of its annual income should be passive income, i.e. income from interest, dividends, income from the sale of shares, sureties or guarantees, copyrights and industrial property rights. Moreover, the proposed regulations could only be applied if the following two conditions are met:

- The foreign corporation should be situated in the State where the statutory CIT rate is lower by at least 25% than the Polish PIT or CIT rate (or the foreign income would not be taxable at all), and
- The Polish entity should have at least 25% shares or 25% voting rights in the governance bodies of this corporation (e.g. in the supervisory board) or 25% shares related to the rights to participation in its profits.

The above changes should come into force on 1 January 2014.

Amendment to the regulation on the definition of countries and territories applying harmful tax competition

The Regulation of the Minister of Finance of 9 April 2013 on the Definition of Countries and Territories Applying Harmful Tax Competition in terms of Corporate Income Tax (Journal of Laws of 2013, item 494) came into force on 8 May 2013. In the discussed regulation the following countries and territories were removed accordingly from the list of countries and territories applying harmful tax competition:

- Jersey (British Crown dependency),
- Isle of Man (British Crown dependency),
- The Netherlands Antilles (Territory of the Kingdom of the Netherlands).

Names and/or area of certain dependencies of the British Crown and territory of the Kingdom of the Netherlands were updated.

The amendment to the Regulation results mostly from the conclusion of the double taxation avoidance and tax information exchange agreement (with respect to certain categories of income) by Poland and Isle of Man and Jersey Island.

New act on payment periods in commercial transactions

The Act on Payment Periods in Commercial Transactions by which the legislator attempts to limit the phenomenon of the “payment gridlock” entered into force on 28 April 2013. The present act, whose main purpose is to discipline contractors to comply with the agreed payment dates, implements the Directive 2011/7/EU of the European Parliament and of the

Council of 16 February 2011 on combating late payment in commercial transactions. The above-mentioned act introduces new instruments which prevent late payments including: establishing maximum acceptable payment period, introducing maximum deadline for carrying out the audit of goods and services to confirm its compliance with the contract, defining separate principles with respect to transactions where the debtor is a public entity and establishing the right to a fixed compensation for recovery costs of EUR 40.

Tax ordinance:

• Planned changes in the Tax Ordinance

The Ministry of Finance also prepared a comprehensive proposal of changes in the Tax Ordinance. The major proposed changes include:

- Introduction of a “clause against tax evasion”, allowing tax authorities to assess taxpayers’ transactions in terms of economic reasons (other than just tax benefit) and in case of identifying any procedures aiming at reducing the level of taxation by the taxpayer, reassessment of the tax obligation;
- Changes concerning the issue of tax interpretations (among others, submitting applications by electronic means, introducing the possibility to refuse to give a tax interpretation if the applicant is suspected of tax evasion or if in the similar factual situation a general interpretation issued previously can apply, giving right to fiscal chambers to make decisions on the expiry of individual interpretations contrary to general interpretations, limitation of the eligibility for individual interpretation only to requests concerning events susceptible to produce tax effects in the future (i.e. impossibility to receive an interpretation with regard to events which already produced a tax effect in the past) and giving rights



to tax control authorities to issue the so-called “securing decisions” (e.g. blocking bank accounts);

- Extending the scope of information that the heads of tax and customs offices may require from banks (e.g. information on powers of attorney to handle bank accounts, information on movements and balance of accounts specifying inflows, charges and their titles; information on liabilities arising from credit or loan contracts etc.);

Due to the large size of the proposed bill and numerous comments from specialists and administration representatives the definitive version of the amendments is planned to become effective in the second half of the following year.

VAT:

- Introduction of joint and several liability in the area of vat

A new bill to change the VAT Act by introducing joint and several liability has been published on the website of the Ministry of Finance. The purpose of this regulation is to limit VAT fraud in the trade of „sensitive goods” such as fuels, gold and steel bars. According to the bill, VAT payers buying sensitive goods would be liable jointly with the seller for VAT arrears arising from the effected supplies of goods. The institution of joint and several liability would apply only to those taxpayers for which the turnover arising from the trade of sensitive goods exceeds PLN 100 thousand per month. The bill is now at the stage of cross-ministerial consultations. The changes are planned to enter into force this year in October.

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