

# Tax Newsletter

Issue # 22 - January 2012



Dear Sirs,

In the current issue of our Newsletter we give an outline of the most important changes in tax regulations which were introduced from 1 January 2012. We present information on changes by type of tax (VAT, CIT and PIT, real estate tax) including news relating to Tax Ordinance.

We encourage you to read about those topics and we are pleased to invite you to Mazars Tax Conference "Taxes 2012" on 23 February 2012. The Conference will be entirely dedicated to discussion of major changes in taxes as well as presentation of most vital interpretations and judgments given in the recent period by administrative courts, which may have an impact on the business activity.

The details regarding the program and conditions of participation will be sent in a separate correspondence. On behalf of Tax Advisory Department I cordially invite you to participate in this event.

Yours faithfully,  
Krystyna Szydłowska

## SUMMARY

### 1. Major changes in income taxes and social security system regulations

- Changes in regulations on establishing foreign exchange differences
- Income tax advances on business activity carried out by individuals
- Tax relief for IKZE savers
- Increase of disability pension contribution

### 2. Value Added Tax

- Annual adjustment of deductible VAT

### 3. Tax Ordinance

- From 2012 general tax interpretations to be given also on request of taxpayers
- Overnight deposits

### 4. Real estate tax

- New deadlines

### 5. International tax law

- Amendments to double taxation avoidance agreements in 2012 – summary





## 1 Major changes in income taxes and social security system regulations

### *Changes in regulations on establishing foreign exchange differences*

Starting from 1 January 2012, article 15a of the CIT Act and article 24c of the PIT Act defining the rules of establishing fx differences are amended. Pursuant to these amendments, **the effective rate for sale or purchase of foreign currencies and for receiving receivables or paying liabilities is applied when calculating fx differences**. In other cases, when it is not possible to apply the effective rate of a given date to obtained receivables or repaid liabilities, the average rate published by the National Bank of Poland on the last working day preceding this day shall be applied.

The purpose of the amendment is to eliminate interpretation doubts that arose in connection to the previous wording of these regulations.

### *Income tax advances on business activity carried out by individuals*

Starting from 1 January 2012, rules regarding the payment of advance for the last month/quarter of the calendar year with regard to business activity carried out by individuals are changing. **In accordance with new regulations the advance will be payable until 20 January of the next year**. In practice, it will be possible to avoid this payment if the taxpayer files the annual tax return by this date. In the legal framework applicable until the end of 2011 taxpayers paid the tax advance on income from business activity (including income from lease or tenancy payable according to general rules) for the last month/quarter of the calendar year until 20 December – in the amount corresponding to the amount of advance for the previous month/quarter. Changes were introduced both to the PIT and CIT Act.

### *Tax relief for IKZE savers*

Starting from 2012, it will be possible to deduct payments for the individual retirement account (IKZE) made by the taxpayer during the fiscal year from the taxation basis. As a rule, **payments made to IKZE in the calendar year cannot**

**exceed the amount being the equivalent of 4% of the basis of the contribution made to pension scheme determined for the saver for the preceding year**, however not more than 4% of the amount of limitation of annual basis of the contributions to retirement and disability pension scheme announced for the previous year.

Entrepreneurs who benefit from flat taxation of income derived from non-agricultural business activity will also be eligible for deduction of the payments made to IKZE.

The deduction can be made in the annual return. This means that taxpayers will be able to benefit from this relief upon submission of annual returns for 2012 at the earliest. **The maximum amount to be deducted in this year will be PLN 4030.80.**

### *Increase of disability pension contribution*

In accordance with the amendments to the Act on Social Security System that will become effective **on 1 February 2012 the disability pension contribution will reach 8%**. As to disability pension contribution paid by employers or principals the increase will concern only this part of pension contribution which is financed by these payers. From February 2012, these payers will pay, in principle, the pension contribution corresponding to 6.5% of the basis and not 4.5% as until now. At the same time, the amount of contribution paid by the insured who are employees or contractors will remain unchanged – it will equal 1.5 % of income.

## 2 Value Added Tax

### *Annual adjustment of deductible VAT*

**Taxpayers proceeding to annual adjustment of VAT for 2011 should take into account that the principles of establishing the sales ratio were modified on 1 April 2011.**

If a taxpayer conducts taxable and non taxable activity, the deduction applies only to this part of tax which can be proportionally attributed to taxable activities. If it is not possible to distinguish the amounts of input VAT related to activities with regard to which the taxpayer has the right to deduct the output VAT and activities with regard to which such deduction is not allowable, the



taxpayer can deduct the input VAT using the ratios resulting from the sales structure. This ratio is determined as percentage based on the turnover reached in the preceding year and after the end of the fiscal year the taxpayer is obliged to adjust it to the current sales.

In accordance with the regulations that came into force on 1 April 2011 and are applicable to adjustments for 2011, the taxpayers with sales coefficient giving right to deduction exceeds 98% may consider that it amounts to 100% **and as a result deduct the entire VAT**, only if the amount of input VAT not subject to deduction, resulting from application of actual sales ratio per year was lower than PLN 500. Whereas the taxpayers with sales ratio not exceeding 2% may choose whether they prefer to consider that their proportion equals 0 % **and not to deduct VAT at all** or whether they want to apply the actual ratio (in the former legal framework they were not eligible for deduction at all).

The introduced changes are favourable to taxpayers whose deduction ratio does not exceed 2% because they acquired the right to deduct VAT of which they had been deprived in the former legal framework due to low sales ratio. At the same time the amendment to the Act on VAT brings some difficulties to taxpayers whose sales coefficient exceeds 98% - after the amendments they have to make sure that the limit of PLN 500 is maintained, which translates into additional workload when settling VAT.

Moreover, following amendments, the clause - according to which if the difference between the sales ratio determined based on the previous year turnover and the sales ratio determined after the end of the current year did not exceed 2 percentage points, taxpayers were not obliged to adjust VAT declarations after the end of the year - was repealed. In turn, based on the new wording of article 91 section 1 of the Act on VAT, any difference in the sales ratio between the previous and current year must be adjusted (e.g. the adjustment must also be made when the coefficient 45% was applied and after the year end it appeared that it was 46%).

## Tax Ordinance

### *From 2012 general tax interpretations to be given also on request of taxpayers*

**From the beginning of 2012 taxpayers are allowed to apply to the Minister of Finance for general tax interpretation. However, they will have to demonstrate the inconsistency in applying tax law in the same legal and factual situation.**

Until the end of 2011 general tax interpretations having an impact on harmonizing the tax law in Poland were issued quite rarely (28 interpretations since 2007) exclusively on the initiative of the Minister of Finance (ex officio). Following the amendments to Tax Ordinance<sup>1</sup> (i.e. considerable extension of article 14a) coming into force, anyone, except for tax administration authority, will be allowed to file an application for general interpretation of a given issue.

In accordance with the new regulations, this application should include in particular the justification for the necessity of general interpretation by:

- Presenting the issue and specifying which tax law regulations require a general interpretation;
- Demonstrating an inconsistent application of tax regulations to specific decisions, resolutions and individual interpretations given by tax authorities and tax control authorities **in the same factual situation** or future events and in the same legal situation.

Besides, the general interpretation will be issued provided that no tax proceedings or control proceedings of the tax control authority are held or no appeal or complaint challenging the decision or resolution regarding cases mentioned in the application are lodged on the date of filing the application.

If one of the aforementioned conditions is not met or the issue presented in the application is the subject matter of general interpretation and the legal situation in this respect had not changed since then, the Minister of Finance will resolve to leave the application without consideration, against which a complaint can be lodged.

<sup>1</sup> Amendments introduced pursuant to article 9 of the Act of 16 September 2011 on Reduction of Certain Obligations of Citizens and Entrepreneurs (Journal of Laws No. 232, item 1378)



Deadlines for giving a general interpretation and related charges are, in principle, the same as for individual interpretations. The only difference will be that the charge – if the general interpretation is given - is subject to reimbursement within 7 days of its publication.

What is a crucial element of the discussed amendments is that from 2012 filing applications for general tax interpretations in the area of local taxes and charges is henceforth possible; bearing in mind that this is an area where examples of inconsistent tax law application, if only due to the number of tax authorities being competent authorities of local self-government, are most common.

Pursuant to the applicable Regulation of the Minister of Finance of 27 December 2011 applications for general tax interpretation can be filed on ORD-OG form (or with attachment ORD-OG/A as the case may be) and addressed to Directors of competent Fiscal Chambers according to the criteria of division into particular taxes, i.e.:

- With regard to PIT – Director of Fiscal Chamber in **Bydgoszcz**,
- With regard to CIT, excise duty and environmental tax - Director of Fiscal Chamber in **Katowice**,
- With regard to VAT - Director of Fiscal Chamber in **Poznań**,
- With regard to tax on civil law acts, inheritance and donation tax and Tax Ordinance - Director of Fiscal Chamber in **Warsaw**,
- other applications - Director of Fiscal Chamber in **Łódź**.

Directors of these Fiscal Chambers, as first instance bodies, are empowered to give decisions on leaving applications for general interpretation without consideration, whereas the Minister of Finance will be competent to undertake actions related to further proceedings.

### Overnight deposits

Following the amendments to Tax Ordinance which will become effective on 1 April 2012, the principles of taxation of income referred to in article 30a sections 1 – 3 of the PIT Act (interest earnings) will change by modification of the method of establishing the taxable basis in relation to obtaining of these earnings. From this date the taxation basis for these earnings will be determined in a special way i.e. will be rounded up to full zlotys. Currently, in line with the general rule, the taxation bases of interest earnings are

rounded up to full zlotys so that the endings of amounts of less than 50 grosz are omitted and the endings amounting to 50 grosz and more are rounded up to full zlotys. This allows for avoiding to pay tax on overnights generating interest not exceeding 50 grosz.

## 4 Real estate tax

### New deadlines

From 1 January 2012 the deadline for submitting real estate tax declarations for a given fiscal year was changed. The deadline for payment of real estate tax for January was also changed.

In accordance with amendment to article 6 section 9 of the Act on Local Taxes and Charges which was introduced pursuant to article 3 of the Act of 16 September 2011 on Reduction of Certain Obligations of Citizens and Entrepreneurs, **legal persons, organisational units and companies without legal personality** are obliged to file real estate tax declarations for a given year until **31 January (until 15 January before amendment)**, and if the tax liability arose after this date – within 14 days of the occurrence of circumstances justifying the arising of such obligation.

In line with the new regulations the taxpayers will also have more time to pay real estate tax for January – the amendment provides for the payment of the tax until 15 of each month, **and for January until 31 January (until 15 January before amendment)**.

The introduced changes shall be considered as advantageous because they give more time to taxpayers for preparing declarations and for paying the real estate tax. The principles for filing declarations and payment of tax by natural persons will not change.



## 5 International tax law

### **Amendments to double taxation avoidance agreements in 2012 – summary**

#### **1. Double taxation avoidance agreement with Malta**

In line with the signed protocol, the withholding tax on dividends paid to Malta cannot exceed 10%. If the recipient of the dividend is a company holding directly at least 10% of the capital of the company paying the dividends for 24 months, the dividend is subject to exemption. The protocol gives more precise wording to the immovable property clause and extends the definition of the term “person” to include trusts.

#### **2. Double taxation avoidance agreement with Switzerland**

The protocol amending the double taxation agreement with Switzerland came into force on 17 November 2011. This act changes regulations concerning the levy of the withholding tax, namely if the recipient of the dividend holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted 24-month period, the dividend paid is subject to exemption. The exemption from withholding tax also applies to

dividends paid to pension funds or similar institutions in which individuals participate in order to secure pension benefits. Starting from 1 January 2013 the relevant rate for taxation of interest by means of withholding tax will amount to 0%, if the entitled person is a company associated with the company paying the interest. The Protocol gives a more precise definition to the term “royalties” and reduces the withholding tax rate to 0%, if the recipient of royalties is a company associated with the company paying the royalties. In addition, an immovable property clause and tax information exchange clause were introduced.

#### **3. Agreement for avoidance of double taxation with respect to certain income of individuals with the Isle of Man**

The agreement for avoidance of double taxation with respect to certain individuals signed with the Isle of Man entered into force on 1 January 2012. It applies, among others, to income from employment, directors’ fees, artists and sportsmen, pensions, government service and students. As a method of avoiding double taxation, credit method was adopted.

Moreover, the tax information exchange agreement came into force on 27 November 2011.

## How to order TaxNewsletter?

Tax Newsletter is a free-of-charge monthly newsletter concerning tax issues.

In order to subscribe, please send an e-mail to: [podatki@mazars.pl](mailto:podatki@mazars.pl) with the following data:

**First name and surname**  
**Position**  
**Name of the company**

*If you do not want to receive the newsletter in the future, please send an e-mail with “NO” in the subject heading at: [podatki@mazars.pl](mailto:podatki@mazars.pl)*

Contact:



Krystyna Szydłowska  
Head of the Tax Advisory Department  
[k.szydłowska@mazars.pl](mailto:k.szydłowska@mazars.pl)

**Tax Advisory Department**  
**Mazars in Warsaw**  
**Ul. Piękna 18**  
**00-549 Warszawa**  
**Phone no.: +48 22 25 55 200**  
**E-mail: [podatki@mazars.pl](mailto:podatki@mazars.pl)**  
**[www.mazars.pl](http://www.mazars.pl)**

Mazars is a partner company of the Instytut Rachunkowości i Podatków



*The aim of this Tax Newsletter is to inform the readers about the current changes related to taxes. The presented information has been prepared with due diligence, but it is presented in an abridged and general form. This publication is therefore solely informative and is no legal or tax advice. Mazars Audyt Sp. z o.o. is not responsible for the use of the presented information. Before taking any decision or steps, we suggest that you ask the consultants of Mazars Audyt Sp. z o.o. for expert advice.*