

Polish Deal. Tax changes – draft bill

On October 1, 2021, the Sejm adopted a package of amendments to tax laws implementing the tax provisions included in the economic program known as the Polish Deal. The bill will now go to the Senate. According to the government's plan, the new regulations are to enter into force from the beginning of 2022, which means that the law must be passed and promulgated before the end of November.

Apart from the previously announced changes in the taxation of salaries and economic activity undertaken by natural persons, the adopted solutions introduce significant modifications in regulations for large business conducted by legal persons. The adopted regulations are very extensive, they modify many existing tax rules, as well as introduce new taxes. Below we present the most important changes that, in our opinion, deserve your attention.

CIT (corporate income tax)

MINIMUM CIT TAX

Originally, the introduction of an additional tax was supposed to apply to the so-called large corporations. However, according to the adopted draft, the new tax is to cover all taxpayers who disclose a loss in their annual tax returns or whose tax profitability is 1% or less. The tax will amount to 0.4% of revenues plus 10% of the so-called excess costs, among others costs of debt financing, costs of licenses and intangible services purchased from related entities.

According to the draft, this tax will not apply to:

- new entities (start-ups during the first three years of their activity),
- financial companies,
- companies with revenues lower by at least 30% in the tax year compared to the previous year,
- taxpayers with a simple ownership structure (shareholders are only natural persons),
- companies dealing in international transport or mining of minerals,
- entities belonging to a group of at least two companies, in which one company has a direct 75% share in the share capital of other companies in this group throughout the tax year, if:
 - the companies' tax year covers the same period, and
 - the share of companies' total income in their total income calculated for the tax year is greater than 1%.

DEPRECIATION IN REAL ESTATE COMPANIES (RECos)

The act stipulates that residential buildings and residential premises constituting a separate real estate are not subject to tax depreciation. Additionally, in the case of RECos, depreciation write-offs on fixed assets classified as buildings and premises (group 1 KŚT) may not be higher than the depreciation write-offs made in accordance with the accounting principles, charging the entity's financial result in this tax year. The above mentioned change may have negative consequences for taxpayers who, recognize in the balance sheet the real estate as investments and do not make depreciation write-offs for accounting purposes.

Under the transitional provisions, taxpayers may, no longer than until December 31,

2022, include in tax deductible costs, depreciation write-offs on fixed assets and intangible assets that are residential buildings acquired or constructed before January 1, 2022.

TAX ON THE SO-CALLED SHIFTED INCOME

The act introduces a new tax on corporate taxpayers due on the so-called shifted income. This tax amounts to 19%.

“Shifted income” shall be deemed to be costs (!) incurred directly or indirectly for the benefit of a related entity and constituting a receivable of that entity, if:

- the income tax actually paid by that related party for the year in which it received the receivable in its country of residence is at least 25% lower than the amount of income tax that would be payable on it using the 19% tax rate, and
- these costs:
 - are recognized in any form as tax deductible costs, deducted from the income, tax base or tax of the related entity, or
 - paid by this related entity in the form of dividends or other revenues from participation in the profits of legal persons for the year in which it received the payment,

- constituted at least 50% of the value of revenues obtained by this entity, determined in accordance with the provisions on income tax or in accordance with accounting provisions.

These costs include the costs of intangible services (advisory, advertising, management, etc.), royalties, fees for transferring the risk of debtor insolvency due to loans, costs of debt financing, fees and remuneration for transferring functions, assets or risks, if the sum of these costs incurred in the tax year for the benefit of entities, including unrelated entities, constitutes at least 3% of the total tax deductible costs incurred in this year in any form.

"THE HIDDEN DIVIDEND"

The Act defines a "hidden dividend" as a non-tax cost that meets one of three conditions:

1. the amount of the cost or the date of incurrence are to depend in any way on the profit (or its amount) made by the taxpayer, or
2. the taxpayer (e.g. a company) would not incur such a cost if they acted rationally or if they could pay less for the service from an unrelated entity, or
3. the cost is related to the payment of remuneration for the right to use the assets that were the property of the partner, shareholder or persons associated with them prior to the establishment of the company.

Conditions 2 and 3 shall not apply if the sum of the costs incurred by the taxpayer in the tax year, constituting the hidden dividend on the basis of these regulations, is lower than the amount of gross profit within the meaning of the accounting regulations obtained in the financial year in which these costs have been included in the taxpayer's financial result.

The new rules on "hidden dividends" are to apply from 2023.

CHANGES IN THE WITHHOLDING TAX COLLECTION MODEL (WHT)

The general rules for WHT exemptions / lower WHT rates will apply when payments made to one recipient do not exceed PLN 2 million per year, while if this threshold is exceeded, the Polish tax remitter will have to collect WHT at the statutory basic rate (19% / 20%), and then it will be possible to apply for a WHT refund (new “collect and refund” mechanism). The new WHT collection mechanism will only apply to foreign payments to related entities, and the regulation will apply to interest, dividends and royalties (other payments, such as compensation for intangible services, will be



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	<p>excluded from the new WHT mechanism). The Polish payer will be able to apply the WHT exemption / reduced WHT rate also to dividends, interest and royalties paid to a related entity, exceeding the limit of PLN 2 million, but only on the condition of obtaining an "opinion on the application of WHT benefits" or on the condition of submitting a special statement to tax authority.</p>
<p>POLISH HOLDING COMPANY</p>	<p>The Act introduces a definition of a holding company and provides for tax preferences for it, such as exemption from CIT of 95% of the amount of dividends received by the holding company from subsidiaries and full CIT exemption of profits from the sale of shares / stocks in subsidiaries (participation exemption). The new tax regime will be available to Polish holding companies with domestic or foreign subsidiaries. It will be an alternative to the currently functioning institution of the tax group. As announced by the Ministry of Finance, the main goal of the project is to provide Polish entrepreneurs with favorable conditions for the establishment and control of holding groups (accumulation of domestic capital) and the creation of a competitive tax environment that will favor the tax repatriation of Polish entrepreneurs.</p> <p>The new regime is an alternative to the currently binding WHT exemptions implemented from the EU Directives. A taxpayer, being a holding company, will therefore be able to either benefit from EU exemptions or from exemptions under the proposed holding regime (from taxation of dividends, income from the disposal of shares or stocks of this subsidiary). Entities that benefit from exemptions from the current law before the entry into force of the proposed changes will be able to choose to switch to the new regime.</p>
<p>JPK CIT</p>	<p>The Act introduces the obligation for taxpayers to keep accounting books (tax records) using computer programs and the obligation to send them in a structured form to the tax office. This obligation is to enter into force from 2023.</p>
<p>RELIEF AND EXEMPTION IN CIT</p>	<p>Research and development relief (R&D). Planned changes in this area concern, among others:</p> <ul style="list-style-type: none"> ■ introducing the possibility of deducting from CIT advances, deducted receivables from the income (revenues) of natural persons employed by the taxpayer under an employment contract or civil law contracts, for eligible research and development costs, which the taxpayer did not deduct because they suffered a loss, or the amount of income was lower than the amount of deductions they are entitled to, ■ introducing the possibility of using the R&D tax relief and the IP Box tax relief at the same time in relation to the same income. <p>Relief for robotization. According to the assumptions of the project, the relief is to function on the basis of a relief for research and development. A taxpayer conducting industrial (production) activity will be entitled to deduct from the tax base costs that have already been classified as tax deductible costs. It is, among others costs of purchasing brand new industrial robots, intangible assets necessary for proper commissioning and acceptance for use of industrial robots.</p> <p>Consolidation relief. The purpose of this relief is to create a tax incentive for taxpayers wishing to expand economically on domestic and foreign markets by acquiring shares in capital companies operating on these markets.</p> <p>The relief for trial production of a new product and its introduction to the market introduces the possibility of deducting from the tax base an amount</p>



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	constituting 30% of the costs of trial production of a new product and launching such a product on the market.
TRANSITIONAL LUMP SUM ON INCOME (TAX ABOLITION)	<p>The proposed regulations introduce a transitional income tax on certain income of natural persons, legal persons and other organizational units. It is a solution addressed to entities interested in disclosing previously untaxed income to tax authorities and interested in withdrawing from previously undertaken optimization activities. The rate of the transitional lump sum on income is 8% of the tax base.</p> <p>The solutions of the act will be available to entities (taxpayers) that have obtained income from sources that have not been declared fully or partially for taxation in Poland for the purposes of personal income tax or corporate income tax, or have not properly paid on these entities the obligation to collect tax (payers). The new solution does not apply to entities which are subject to tax proceedings or control, as well as income from illegal sources.</p>
TRANSFER PRICES	<p>The draft act introduces numerous changes to the transfer pricing regulations, including:</p> <ul style="list-style-type: none"> ■ extension of deadlines for the preparation of local transfer pricing documentation and its submission at the request of the authority, ■ cancellation of the statement on the preparation of transfer pricing documentation as a separate document and transfer of the statement to the transfer pricing information, ■ changes in the scope of information on transfer pricing (TPR), including extending the deadline for its submission and limiting the possibility of its submission by an attorney, ■ possibility of not including in the local transfer pricing documentation of a benchmarking analysis or a compliance analysis in the case of controlled transactions concluded by related entities that are micro or small entrepreneurs within the meaning of the Law of Entrepreneurs, as well as for transactions other than controlled transactions concluded with the so-called tax havens or in which the actual owner of the contractor is a resident of the so-called tax havens, ■ specifying directly that the date of concluding the loan agreement is also the date of changing the loan agreement if the change concerns the interest rate on the loan (for safe harbour mechanism), ■ introducing the possibility of making a negative transfer pricing adjustment in a situation where the taxpayer has received appropriate accounting evidence from a related entity and resignation from the obligation to inform about the transfer pricing adjustment in the annual tax return.
OTHER CHANGES IN CIT	<ul style="list-style-type: none"> ■ Repeal of Art. 15e, which limits the possibility of including tax expenses of the so-called intangible services and licenses for related entities. However, the introduction of this change does not mean that the legislator will completely refrain from discriminating against this type of costs, the calculation of the amount of such expenses (the limit of PLN 3 million + 5% of the tax EBITDA) will generally still be necessary within the new minimum CIT tax. ■ Limit on debt financing costs – a restrictive explanation of how the limit is calculated. The current CIT regulations allow for the interpretation that the limit of debt financing costs (included in tax costs) can be set at a level corresponding to PLN 3 million + 30% of the tax EBITDA annually (such interpretation is confirmed by administrative courts). The new regulations will exclude this favorable approach - from 2022 the limit will be clearly defined as the value of 30% of the tax EBITDA or PLN 3 million (depending on which of



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these values is greater) - as a result, it will no longer be possible to add up both limits.

- **Limitation on debt financing costs (equity transactions)** - will apply to financing received from a related entity and use of financing for equity transactions, in particular the acquisition of shares in another entity, capital contributions, redemption of own shares for redemption.
- **Clarification of tax residence** - in accordance with the draft act, the taxpayer will have a management board in Poland, inter alia, when the current affairs of this taxpayer are conducted in an organized and continuous manner.
- **Extending the catalog of revenues from capital gains** to include all revenues obtained as a result of transformations, mergers or divisions of entities, as well as revenues obtained as a result of liquidation of a company that is not a legal person, or a partner's withdrawal from such a company.
- **Changes in the scope of the "Estonian CIT"** - the revenue limit is to be abolished, the catalog of entities that can benefit from the Estonian CIT is expanding.
- Possibility of concluding with tax authorities the so-called "**Investment agreements**" relating to the tax consequences of new investments planned in Poland (limited scope of eligible investments).

VAT (value added tax)

VAT GROUPS

The act introduces **VAT groups** into the Polish legal system. Creating VAT groups will enable entrepreneurs to manage VAT in the entire group, which will affect cash-flow within the entire capital structure. This solution will enable the submission of one JPK_V7M and payment of tax for all entities forming the group. Entities belonging to the VAT group will not have to settle VAT in transactions with each other. The new regulations are to apply from July 1, 2022.

FAST VAT RETURN

The assumption of the proposed change is to popularize non-cash transactions by creating a tax incentive addressed to the non-cash taxpayer. According to the draft regulations, once a number of conditions are met, VAT would be refunded within 15 days. Due to the number and scope of conditions for fast VAT refund, it should be assessed that this solution will be of little interest to taxpayers.

TAXATION OF FINANCIAL TRANSACTIONS

According to the draft amendment to the VAT Act, taxpayers will be able to choose VAT for financial services. A taxpayer resigning from VAT exemption and choosing VAT will be obliged to tax all services provided by him to taxpayers. According to the draft, the taxpayer who waives the exemption will be bound by his choice for a period of two year

PIT (personal income tax)

HIGHER TAX ALLOWANCE

As announced before, the tax allowance for all PIT taxpayers will increase to PLN 30,000 (currently it is PLN 8,000).

RAISING THE TAX TRESHOLD

The next change is **to raise the tax threshold** for entering the higher income tax bracket from the current amount of over PLN 85,000 to PLN 120,000 p.a. Currently, taxpayers who earn up to PLN 85,000 annually pay tax at **a rate of 17%**. Income exceeding the annual limit of PLN 85,528 is taxed **at 32%**. After the amendment, the 32% rate will apply to income above PLN 120,000.



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HEALTH INSURANCE CONTRIBUTION DEDUCTION	<p>In exchange for the higher tax-free allowance and the increased second tax threshold, the government announced changes to the rules for deducting health contributions. After the amendments, the contribution will still be 9%, but it will not be in any part tax deductible as it is now. For high earners, this will mean a tax increase of 7.75 percentage points – the Ministry of Finance has announced a relief for the middle class to offset the higher tax.</p>
TAX RELIEF FOR MIDDLE CLASS	<p>Tax relief for middle class is intended for individuals with income from 68.4 thousand PLN up to 133.6 thousand PLN per year. It will mean that these people, despite the inability to deduct health insurance contributions, will not pay a higher income tax.</p> <p>An amendment was also introduced, according to which the tax relief for the middle class will be available to entrepreneurs who settle according to the tax scale (originally it was planned only for employees).</p>
HEALTH CONTRIBUTION FOR THE MEMBERS OF THE BOARD OF DIRECTORS AND COMMERCIAL PROXIES	<p>The draft provides an amendment to the Act on the National Health Fund, pursuant to which persons appointed to perform functions under the act of appointment (and receive remuneration on this basis) will be covered by compulsory health insurance.</p> <p>The planned changes mainly concern members of the management board and proxies who perform their functions on the basis of the act of appointment, receiving remuneration for this. For these people, this means an increase in the burden by 9% of the basis for calculating the contribution, as it will not be tax deductible.</p>
HEALTH CONTRIBUTION TO ENTREPRENEURS	<p>Entrepreneurs, including sole proprietorships (self-employed persons) and partners of partnerships await large and unfavorable changes in the rules of paying health insurance contributions. This contribution will be calculated in the same way as for employees, i.e. depending on the total income in a given month. Additionally, just like for employees, the health insurance premium will not reduce the tax. Compared to the current solution, where the contribution is flat-rate (regardless of income) and is tax deductible, it means an increase in the effective burden on entrepreneurs. The Ministry of Finance also announced that it is not working on changes to tax deductible costs or social security contributions.</p> <p>Flat taxpayers will pay a health insurance premium of 4.9% income, but not less than PLN 270 (the minimum amount of the health insurance contribution depends on the minimum wage).</p> <p>For people who settle with a flat-rate tax (lump sum on recorded income) thresholds will be set, according to which people with annual income up to 60 thousand PLN will pay a premium of 9 percent from 60 percent average wage in the enterprise sector in the fourth quarter of 2020. For companies with revenues between 60,000 PLN and 300 thousand PLN, the premium will be calculated from 100 percent of average salary, and for companies with revenues over 300 thousand PLN from 180 percent of average salary.</p>
RENT AND DEPRECIATION	<p>The act adopted by the Polish Parliament (Sejm) introduces unfavorable changes in the settlement of the lease of apartments and buildings. The project assumes that it will not be possible to classify depreciation write-offs on buildings and residential premises as tax deductible costs.</p> <p>In addition, for natural persons who do not conduct business activity, from 2023 there will be a rule that rental income may be taxed only with a lump sum on recorded income. This change will mean the inability to settle costs and pay a flat tax on the amount received from the tenant.</p>



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JPK PIT

The Act introduces the obligation for taxpayers to keep accounting books (tax records) using computer programs and the obligation to send them in a structured form to the tax office. This obligation is to enter into force in 2023.

OTHER CHANGES IN PIT

- Changes in the taxation of company cars - new regulations will refer to engine power instead of capacity. The lump sum for cars up to 60 kilowatts will be PLN 250. For stronger cars PLN 400.
- Elimination of preferential settlement for single parents and replacing it with a deduction of PLN 1,500 per year from tax.
- Zero PIT for repatriates, which means that those returning from abroad will not pay income tax for four years if their income does not exceed PLN 85,528 per year.
- Taxation of income from the sale of an asset (e.g. a car) leased out and bought out to private property if the sale is made within six years of buy-out.
- Lower limit of cash transactions between entrepreneurs - from 15,000 PLN up to 8,000 PLN.

Lowering some lump sum rates on recorded revenues (e.g. for some IT services a reduction from 15% to 12%).

This document has been prepared for information purposes only and covers general nature. Before taking any action based on the above information, we recommend that you obtain a valid opinion of TPA experts.

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