

Withholding tax in Poland – a new mechanism

September 26, 2018

In brief

On August 24, 2018 a draft bill amending i.a. the Corporate Income Tax (“CIT”) Law was published. At present, public consultations have been completed and the project was approved by the government on September 24. The bill introduces a new mechanism regarding withholding tax (“WHT”), which will have significant impact on foreign investors.

New mechanism

A completely new mechanism of settlement of WHT in relation to payments exceeding PLN 2 m. per annum for each taxpayer is to be introduced. Under the new rules, the conditional exemption from WHT or application of the reduced tax rate stipulated in the applicable Double Tax Treaty will be restricted.

Note that the new requirement will also apply to regulated investment / pension funds, which are currently covered by a tax exemption.

With regard to payments not exceeding PLN 2m. per annum for each taxpayer, the remitter will still be entitled to apply reduced WHT rate or WHT exemption according to the current rules (though the some additional requirements are imposed on the tax remitter).

Certification process

New mechanism allows the remitters not to withhold tax in relation to payments exceeding PLN 2 m. per

annum if the remitter submits a statement confirming that:

1. it possesses all documents necessary for applying reduced WHT rate or exemption from WHT;
2. it is not aware of any circumstances which speak against granting tax exemption.

The above will require the remitter to go through an extensive self-certification process, for which guidelines were not specifically set.

It should be stressed out that the remitter will be held accountable as to the completeness of the documents and correctness of the facts considered during the Certification process (fines and penalties including imprisonment under the Fiscal-Penal Code will apply). In addition, a penalty of 10-30% of the tax base may be imposed, if during a tax audit, the tax authorities question the results of the certification process.

Refund

In compliance with the new mechanism, the taxpayer / remitter shall have the right to claim for a WHT refund. This will be a procedure similar to current WHT claims (i.e. very formalistic and requiring an extensive analysis of source documents).

Opinion

Alternatively to the above the taxpayer or the remitter which incurred the economic cost of WHT and meets certain conditions stipulated in the CIT Law shall be able to apply to the tax authorities for an opinion confirming that tax may not be withheld (“**Opinion**”).

The Opinion shall be given 6 months from date of application at the latest and be valid for 36 months. Application for the Opinion shall be subject to fee of PLN 2,000.

Tax application for the Opinion might be rejected if:

- the taxpayer does not meet the requirements stipulated in the CIT Law;

- anti-avoidance provisions may be applicable;
- documents attached to the application are not in accordance with the factual circumstances;
- the taxpayer does not conduct a business activity in the country of his tax residence.

How can we help

PwC has extensive experience regarding refund procedure, for both entities

from the asset management sector as well as various EU seated holding companies.

Our team of CIT/EU Law and Litigation experts has in-depth knowledge as to the type of documents expected by the tax authorities during various comparability studies. This allows us to provide our clients with complex services covering:

- development of adequate criteria to go through the self-certification process

(e.g. how to document the substance of a holding company);

- development of relevant procedures confirming that the all documents are in place (e.g. when to obtain tax residency certificates);
- assistance with obtaining the Opinion, as well as
- assistance during the WHT refund procedure.

Let's talk:

In the case of any doubts and questions related to above information, please contact with persons indicated below:

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