Exit tax in Personal Income Tax is to come into force

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In brief

On 14th November 2018 the President of Poland signed a bill amending the Polish Personal Income Tax Act. The changes relate i.a. to implementation to the Polish tax system of a new tax from unrealised profits, so called exit tax.

General remarks

Introduction of exit tax to the Polish tax system results from an obligation to implement the Directive (UE) 2016/1164, adopted in 2016. The mentioned directive establishes provisions in order to prevent tax avoidance practices, which may have indirect impact to functioning of the internal market, so called the ATAD Directive.

A crucial assumption of the exit taxi is taxation of unrealized profits in connection with moving one's assets to another country, also those which are part of a permanent establishment.

The tax will be also due in case of change of the residency status of a taxpayer, which deprives Poland from taxation of income which arises in connection with disposal of the individual's property.

Exit tax in PIT

In accordance to the newly introduced provisions, the basis for taxation will be unrealized capital gains earned by individuals within their business activity, and individuals who are not entrepreneurs.

In case of entrepreneurs, exit tax will be imposed on assets moved out of Poland. For other individuals, exit tax will be due as a result of losing one's Polish tax residency. The latter may be more common when it comes to PIT taxpayers.

Thus, exit tax regulations may apply to both employees leaving Poland to work abroad, as well as foreigners assigned to work in Poland, who after the end of their assignment decide to leave Poland.

Additionally, the obligation to pay exit tax should arise only in case when an individual has the place of residence in Poland for at least a 5 year period in total within 10 years preceding the day of change of the tax residency status.

Tax rates

The exit tax rate is equal to 19% and 3%. The lower rate is applicable in case when the income is not to be decreased by tax deductible costs. In practice, the most common tax rate will be 19%.

Type of assets covered by exit tax

In case of moving the tax residency abroad, exit tax will be due only on the following assets:

- rights and obligations in a partnership ,
- shares in a company,
- stock and other securities,
- derivatives and certificates.

It should be emphasized that exit taxation will not be limited to assets acquired during one's Polish tax residency, but **also assets acquired before the**

individual's arrival to Poland.

Limits in exit tax

The general assumption of introduction of exit tax was only to cover assets with value exceeding 4 million PLN. This is the case involving moving of assets abroad.

Whereas in case of change of one's tax residency, the current wording of the new provisions raises doubts whether there is any limit of the assets amount.

The analysis of the provisions of the bill ultimately adopted by the Polish Parliament justifies the position that the limit actually does not exists. Thus it seems that any **individual who enjoyed the status of a Polish tax resident for more than 5 years, and subsequently lost that tax residency, will be subject to the exit tax regardless of his or her assets value.**

Date of payment and tax forms

In case of moving property abroad, the tax will be due within 7 days.

However, the bill does not provide provisions regarding obligation of tax payment in case of losing one's Polish tax residency.

Installments and tax return

According to the new regulations, the taxpayers will be entitled to request payment of exit tax in installments for a period not exceeding 5 years.

Moreover, if **an individual moved his/her residency abroad and then subsequently became a tax resident of Poland again, he/she will be able to apply for a refund of the exit tax paid earlier.**

Let's talk

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