

A draft Ordinance limiting the applicability of a new mechanism for charging withholding tax in Poland

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In brief

On 10 December 2018, a draft Ordinance of the Minister of Finance on the exclusion or limitation of the application of art. 26 par. 2e of the CIT Act has been published. The Ministry of Finance proposes to extend the deadlines related to the fulfilment of certain obligations under the new rules for charging withholding tax until 30 June 2019 or 31 December 2019 and to effectively exclude payments to some entities from the scope of new regulations.

Ordinance's scope

A new mechanism for collecting withholding tax covered by the amendments to the CIT Act, which will come into force on January 1, 2019, provides for the obligation to collect tax if the total amount of receivables exceeds PLN 2 million. Tax is charged on receivables in excess of this amount. The new rules for collecting withholding tax are applied without the possibility of not charging the tax on the basis of an appropriate agreements on the avoidance of double taxation, and without taking into account the exemptions or rates resulting from specific local regulations or agreements on the avoidance of double taxation on avoidance.

Exclusion of use

The Ordinance of the Minister of Finance indicates indefinite

exclusion of the provisions related to receivables obtained by non-residents among others from interest or discount on bonds issued by the State Treasury and offered on foreign markets, Bank Gospodarstwa Krajowego, as well as receivables obtained from central banks covering interest or discount on Treasury bonds issued by the State Treasury on the local market that have been acquired by these banks since November 7, 2015.

Limitation of use

The draft Ordinance limits also the application of art. 26 par. 2e of the CIT Act (i.e. the provision excluding exemptions / reduced rates for payments exceeding the threshold of PLN 2 million) **until the end of June 2019** in relation to, among others, payments for dividends, interest and intangible services, and **until the end**

of December 31, 2019 with regard to payments for use or the right to use commercial, scientific or industrial equipment as well as transport means or payments made for international traffic of goods and passengers (in both cases, the condition is that there is a legal basis for the exchange of tax information).

What does it mean to me?

The catalogue of entities, that are excluded from the application of the new regulations is relatively limited and does not correspond to the expectations reported by entrepreneurs. The question remains open, whether the Ministry of Finance will introduce further exemptions. At the same time, postponement of deadlines of the entering into force of the

new legislation covering the withholding mechanism applies only to the situation, when the payment amount exceeds PLN 2 million and **does not exclude other obligations** imposed on the tax remitters by new

regulations (both situations, when the payment exceeds the statutory threshold and does not), which was explicitly confirmed by the Ministry of Finance in the justification for the draft Ordinance. In this regard,

PwC has prepared a package of solutions and tools that can help tax remitters and taxpayers in meeting the new (and also the limited) requirements.

Let's talk

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