

# New withholding refund rules in Poland – how to navigate?

WHT Navigator will help you to find your way



As of 2019 new refund rules for payments exceeding PLN 2 m. per annum to a given taxpayer and a completely new mechanism of settlement of withholding tax will be in place. In case of dividends the change affects both Polish and foreign recipients. Also, with regard to certain payments not exceeding PLN 2 m. per annum, in order for the remitter to apply the reduced WHT rate some additional requirements will be applicable. The regulations also introduce new exemptions. For example, withholders shall not be obliged to collect WHT on interest/discount on corporate bonds (if certain conditions are met).



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# Are you afraid of new WHT challenges as of 2019 in Poland?



**WHT Navigator:** unique digital tool developed by PwC which will help you to maintain due diligence **as required by new Certification rules (see below)**. WHT Navigator will also support your discussions with contractors who receive payments subject to WHT under domestic laws.



## Who?

New regulations will affect both taxpayers (in particular holding companies, service providers, regulated investment / pension funds) and tax remitters who shall be subject to new rules regarding both collection and reclaim of WHT.



## Challenges?

The new rules affect cash flows and shift the personal liability exposure to tax remitter (board members).



## How?

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

To prepare the statement the remitter needs go through an extensive self-certification process, for which guidelines were not specifically set.

**The Certification** process will require in particular:

- i) additional due diligence (including customer due diligence measures),
- ii) collection and review of source documents,
- iii) beneficial ownership and substance tests.

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**Refund:** The taxpayer/remitter shall have the right to claim for a WHT refund. There will be a new digital refund procedure. The details are not yet published.

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**Opinion:** The taxpayer or the remitter who suffered economic cost of WHT and meets certain conditions stipulated in the CIT Law may apply to the tax authorities for an opinion confirming that the tax may not be withheld ("Opinion"). The Opinion shall be issued within 6 months from the date of application at the latest and be valid for 36 months. Application for the Opinion shall be subject to a fee of PLN 2,000. The application for the Opinion might be rejected in certain situations (e.g. if anti-avoidance provisions may be applicable).




## Penalties!

Tax remitter will be held accountable as to the completeness of the documents and correctness of the facts considered during the Certification process (personal liability, in particular 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.



# WHT Navigator – how it can help you?



Obligations resulting from the new rules may vary depending on the specifics of a given case (in particular: whether the threshold of PLN 2 m is met, the type of payment, the application of reduced rates or exemptions).

As the relevant provisions provide little guidance in this respect PwC, based on professional experience gained during a variety of projects concerning certification of investment funds, reclaiming WHT, tax litigation and support of our Clients during tax audits, review of business justification of cross-border transactions, analysis of business substance of holding companies, review of significant business activity for the purpose of CFC provisions, was able to develop a unique tool, which allows Clients (subject to their specific background) request information and documents that should provide comfort that the application of a reduced rate or an exemptions is justified.

## Our story:

### WHT NAVIGATOR

Review of business justification of crossborder transactions

Certification of investment funds

Tax litigation and suport during tax audits

Analysis of business substance of holding companies

Review of significant business activity for the purpose of CFC provision

## Our purpose:

The WHT Navigator is intended as a tool that may be shared by the tax remitter with the tax payer, to be populated with relevant data, information and source documents.





## Additional services

Apart from WHT Navigator, we may provide you with the following services:

- Identification of applicable changes in new Polish WHT provisions and their impact on the future process of WHT settlements in a particular case (including new obligations and tasks to be imposed on tax remitter as well as risks resulting thereof) to be presented in form of a **Memorandum**.
- Assistance in the Certification process, during which we may, based on documents and information gathered by the WHT Navigator, help clients in assessment of whether the source information should be considered as sufficient in order to apply the reduced rates or a tax exemption (during this process we may also assist in formal drafting of the relevant statements to be provided to the tax authorities) .
- Assistance during the process of obtaining the Opinion (in case of payments exceeding PLN 2 m. per annum and the potential to apply WHT exemption provided by the CIT Law.
- Assistance during the WHT reclaim procedure – PwC has extensive experience regarding refund procedure for different types of entities. Our team has in-depth knowledge as to the type of documents expected by the tax authorities during various comparability studies.

## 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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