

1. Adoption by the Sejm of amendments to the Act on profit shifting

The purpose of the Act amending the Act on personal income tax, the Act on corporate income tax and certain other Acts, adopted by the Sejm in its ultimate wording on Friday, 9 October 2015, is to make it difficult for related companies to shift their profits overseas. The Act implements EU rules of levying taxes on income of companies that have equity-based relations with headquarters located in different Member States. It changes the rules of taxing dividends paid between such companies. The amending Act contains more precise regulations pursuant to which an exempt will not be applicable in cases where dividends are paid as a result of fictitious arrangements which do not reflect the economic facts but are aimed mainly at obtaining a tax exemption. The Act also contains provisions implementing the Directive pertaining to exchange of information on income from savings disbursed to natural persons. A chapter which comprehensively regulates the rules of obtaining and providing information on payments of interest was added to the Act on PIT. Also, standards for documenting transactions between related entities were introduced into the Polish legal system. One of the purposes thereof is to hinder shifting profits overseas.

2. Presidential signing of the Act of 10 September 2015 amending the Tax Ordinance and certain other Acts, which introduces regulations aimed at simplification of tax procedures for companies and tightening up of the tax collection system.

The amending Act provides for a possibility to introduce, apart from a special power of attorney to handle a specific matter, a general power of attorney enabling its holder to represent the taxpayer in all tax matters. Not only tax consultants, but also attorneys-at-law and legal advisors will be allowed to act as temporary special attorneys. There will be a possibility to electronically submit a power of attorney to a central register. Such a submission will not be subject to stamp duty.

3. Publication of amendments to the Act on payment deadlines in commercial transactions

On 9 November an Act amending the Act on payment deadlines in commercial transactions, the Civil Code and certain other Acts was published (Dz. U. [Journal of Laws] item 1830). The Act introduces a standardized mechanism for accruing interest under civil law transactions and brings the maximum interest level closer to the market interest rates.

The amending Act implements certain provisions of Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions and changes the rules of accruing interest under civil law transactions.

The most important changes provided for in the Act are as follows:

- 1) introduction of a mechanism for accruing default interest in professional transactions - the NBP reference rate + 8 percentage points;
- 2) a new mechanism for accruing statutory interest under the Civil Code and diversification of the amounts of the said interest;
- 3) a new mechanism for accruing maximum interest, which will be equal to twofold statutory interest (on principal) or statutory default interest, respectively.

In addition, the Act adjusts some of the used terms to the wording of the Directive and specifies more clearly the provisions whose practical application is difficult (e.g. calculating the so-called compensation in a situation where multiple invoices are issued under a single contract).

4. Publication of an Act introducing tax allowances for innovations

Into regulations concerning PIT and CIT, the Act amending certain Acts related to supporting innovation introduces an allowance to deduct the costs incurred in relation to research and development activities from the tax base.

The Act of 25 September 2015 (Dz. U. [Journal of Laws] item 1767) specifies which costs are deemed to be eligible costs that can be deducted. Pursuant to the Act, not all costs, but a part of them would be deductible, starting from 30% of remuneration costs for all taxpayers, 20% of the other costs for microenterprises, small or medium enterprises, and 10% of the other costs for all taxpayers. Eligible costs incurred as a part of research and development activities will also be subject to deduction. It will be possible to deduct costs incurred as a part of both development works and applied or industrial scientific research. In the case of basic research, the costs will be deductible only in a situation where such research is conducted under a contract or an arrangement with an academic unit. As regards facilitations pertaining to taxes, the Act abolishes taxes on contributions of intellectual and industrial property, on the condition that such a contribution is made to a company within the next two years, that is in 2016 or in 2017. The Act provides also for preferential taxes for the so-called venture capital companies.

5. Introduction of changes in taxation of related entities

Adjustment of the Polish fiscal regulations to the EU regulations in the area of taxation of savings income and a common system of taxation applicable to related companies is the main purpose of the Act of 9 October 2015 amending the Act on personal income tax (published yesterday), the Act on corporate income tax and certain other acts (Dz. U. [Journal of Laws] item 1932).

The EU regulations introduced in the years 2014-2015 provide for common for the EU Member States approach to requirements for documenting transactions between related entities.

6. Amendments to the Act on VAT in 2016

Several amendments have been introduced into the VAT Act. They include new rules of deducting input tax in relation to purchased goods and services used for mixed purposes, or of establishing the competence of tax authorities in cases related to VAT.

Deduction of VAT in relation to purchased goods and services used at the same time for activities subject and not subject to VAT. Proportions have been established for VAT deduction in respect of expenses related both to economic activities subject to VAT, and to activities not subject to VAT. The hitherto applicable regulations did not contain any provisions concerning this matter, and the practical handling thereof was based on the statements contained in a resolution of the Supreme Administrative Court. The change pertains to determination of the amount of VAT levied on expenses incurred in relation to both types of activities, which cannot be included in their entirety only in one of the two categories. Establishing the proportion in such a situation is expected, in the opinion of the Minister of Finance, to result in determination of the amount of VAT deduction in a way which represents in the best possible way the taxpayers and the specific character of their activities. The amendment may impact the amount of VAT deduction both for local government units (which perform their own tasks not subject to VAT, and activities under civil law agreements subject to VAT), and for foundations or natural persons conducting economic activities (in which case the economic activity sphere intertwines with the private sphere).

Most regulations providing for detailed rules of establishing the competence of tax authorities in cases pertaining to VAT, including Article 3 item 1 of the Act on Goods and Services Tax, have been repealed. It means that from now on, as a rule, pursuant to Article 17 paragraph 1 of the Tax Ordinance of 29 August 1997 (consolidated text in Dz. U. [Journal of Laws] of 2015, item 613), heads of tax offices competent for the place of residence or the registered office of a taxpayer have become the tax authorities competent for VAT payers.

A regulation providing for relevant application of the added on 1 January 2016 provisions of Article 65 items 6a and 6b of the Customs Law of 19 March 2004 has been included in Article 37 item 1a of the Act on Goods and Services Tax. That amendment enables application of increased or lowered default interest rates and makes the amount of interest applicable in respect of VAT on imported goods equal to the interest accrued pursuant to the Customs Law. The introduced amendments leave amongst the

competences of the head of customs office the establishment of the amount and reimbursement of overpayment of VAT for imported goods. That is because in a situation where the amount of tax on goods and services for import of goods is established by the head of customs office, it is reasonable that the same body determines the overpayment and disposes of it in accordance with the rules stipulated in the Tax Ordinance.

A new procedure, i.e. a restructuring procedure, has been provided for in the regulations on the so-called allowance for bad debts. The earlier regulations did not provide for any restructuring procedure at all.

7. One-time funds for commencement of economic activities exempted from PIT

Benefits received under employment support, as well as one-time funds for commencement of economic activities granted to graduates will be exempted from personal income tax till the end of 2016.

A regulation of the Minister of Finance on abandonment of collection of income tax from natural persons in respect of certain income (revenue) received pursuant to regulations concerning promotion of employment and labour market institutions (Dz. U. [Journal of Laws] item 194) has already been published. The new regulations are a continuation of the regulation of the Minister of Finance dated 19 December 2014 on abandonment of collection of personal income tax in respect of certain income (revenue) of personal income tax payers (Dz. U. [Journal of Laws] item 1931).

8. 1 January 2016 as the effective date of the last package of amendments introduced with the Act of 9 April 2015 amending the Act on goods and services tax, and the Public Procurement Law (Dz. U. [Journal of Laws] item 605).

The Ministry of Finance has prepared a brochure explaining the rules of deducting VAT in the case of goods and services used for mixed purposes (economic activities and purposes not included in the VAT system) and new rules of deducting VAT on expenses related to motor vehicles. According to explanations provided by the Ministry of Finance, in a situation where a taxpayer incurs expenses related to motor vehicles which pertain both to their economic activities and purposes other than economic activities (not being private purposes):

- the amount arising from an invoice, a customs document, an import declaration and from decisions issued by the head of customs office, or
- the amount of output tax due in relation to intra-community purchase of goods, import of goods covered by simplified procedure, resulting from a customs document, import of services and a supply where the buyer is the taxpayer

should be decreased proportionately in accordance with a proportion calculated pursuant to a method for determining such proportion adopted by the taxpayer.

9. Amendments to the Act on personal income tax and to the Tax Ordinance

The amendments to the Act on personal income tax and to the Tax Ordinance, to become effective at the New Year, is of key importance for taxation of income (revenue) from undisclosed sources. The 75% tax rate will remain in force. However, it will not apply in a situation where in the course of tax proceedings or audit proceedings the source of undisclosed revenues is determined. If that is the case, such revenues will be taxed in accordance with the rules prescribed for the source of their origin. The proof that an expense incurred by a taxpayer has been covered with income taxed or not subject to taxation will rest with the taxpayer. If the taxpayer does not have at their disposal any proof confirming that taxed revenue or revenue not subject to taxation was yielded, and such revenue falls under the statute of limitations, lending credence to the yielding of such revenue will be sufficient. If

yielding of revenue (income) is not proven or no credence is lent to it, such revenue (income) is deemed to be revenue from an undisclosed source.

10. Works on introduction of the so-called law avoidance clause into the regulations

On 30 December 2015 a governmental Bill amending the Tax Ordinance and certain other Acts (hereinafter referred to as “the Bill”) was published. The Bill provides for, amongst others, introduction into the Tax Ordinance of a so-called general anti-avoidance rule (GAAR). The Bill has been sent for consultations between Ministries. The first reading of the Bill in the Sejm took place on 13 April 2016.