

## The Ministry of Finance announces another **package of tax changes to the Polish Deal**, this time affecting corporate income tax (CIT)

23 June 2022

As communicated on the [website of the Chancellery of the Prime Minister of Poland](#), further amendments to the Polish tax laws should be introduced soon. These amendments will concern the package of tax laws' changes to the Polish Deal which entered into force on 1 January 2022.

As it was the case with prior amendments, now it will also be imperative for each corporate income tax payer to analyze specific provisions proposed by the Ministry of Finance to assess their potential impact on the taxpayer's position and tax liabilities.

This time, **corporate income tax** will be the focus of the changes.





# Objectives of the proposed changes

## Minimum CIT (Article 24ca of the CIT Act)

Application of the minimum CIT provisions is planned to be suspended till the **end of 2022**.

Regardless of the above, the structure of this tax is also expected to be modified through:

- increasing the **profitability ratio to 2%** while modifying its calculation methodology, e.g. through the exclusion from the tax-deductible cost, while making the profitability ratio calculation, of lease payments associated with fixed assets, revenues from trade receivables sold to factoring companies;
- introducing an alternative method of determining the tax base for Minimum CIT;
- extending the list of taxable persons eligible for the Minimum CIT, to include for example: municipal companies, taxpayers that generate their revenues mainly in the healthcare sector, small taxpayers, those whose profitability in one of the past three years exceeded the ratio of 2% and those, who declared bankrupt or were in liquidation.

## Elimination of the so called “hidden dividend” provisions (Article 16.1(15b) of the CIT Act)

The so called “hidden dividend” provisions **are planned to be repealed**.

## Amendments to Tax on shifted profits (Article 24aa of the CIT Act)

**The changes planned in this regard are aimed to:**

- ensure that only incurred costs classified as tax-deductible expenses will be subject to this tax;
- clarify that the related party, for which costs regarded as shifted taxable profits are incurred, is a non-resident entity;
- specify clearly the condition regarding 50% revenue generated by the related party and the condition regarding revenue shifting to another entity (at least 10%);
- simplify the condition regarding preferential taxation in the related party's country;
- impose the rule of proper application of the provisions governing Tax on shifted profits to specific arrangements with the involvement of tax-transparent entities or foreign entities that shift taxable profits to other foreign entities that benefit from low tax.

## Amendments to debt financing costs limitations (Article 15c of the CIT Act)

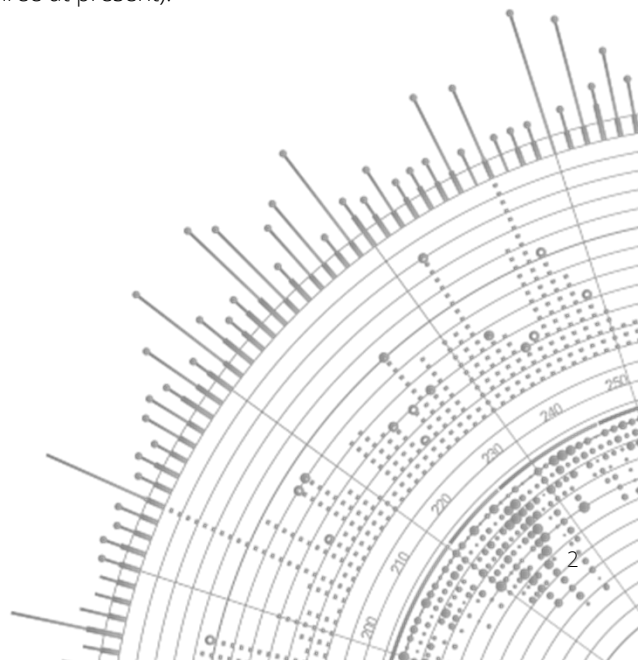
**The changes planned in this regard are aimed to:**

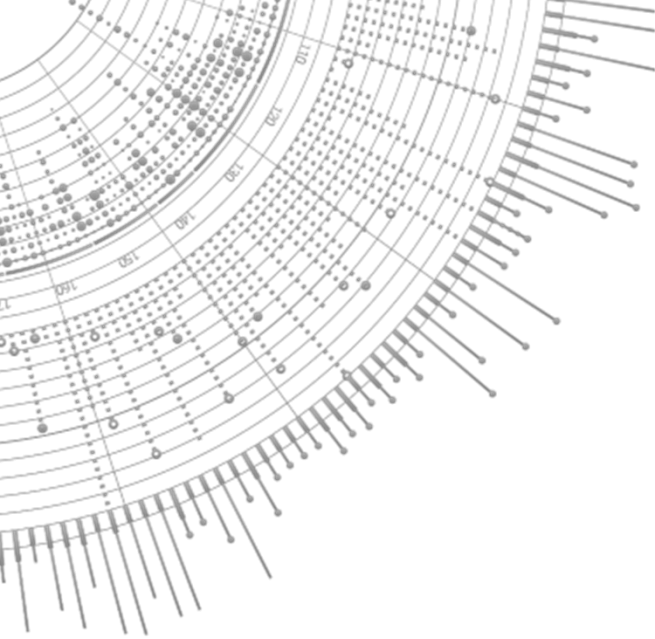
- specify precisely the debt financing cost limit is the higher of (i) PLN 3 million or (ii) 30% of the tax EBITDA;
- provide an exemption from the provisions setting the limit on debt financing costs for equity transactions in situations where a bank or a credit union having its registered seat in a EU member state or in an EEA country is the financing institution. Additionally, these provisions would not apply to debt financing provided for the acquisition or subscription of shares or all the rights and obligations in entities that are unrelated to the taxpayer.

## Amendments to withholding tax (WHT)

The changes planned in this regard concern primarily payouts, which are made through securities accounts or through collective accounts. **These changes are aimed to:**

- provide an exemption from some obligations imposed on payers in broad sense (i.e. both issuers as payers in the narrow sense and entities being the so-called technical payers) with regard to withholding tax on interest and discount on treasury securities (i.e. treasury bills and bonds);
- increase the flexibility of the structure (extension of the period) of the payer's declaration in case of entities making payouts excluding the obligation to apply the pay & refund mechanism (submission of such a declaration would be sufficient to not apply the mechanism for the next seven months versus three at present).





### Amendments to the provisions applicable to the Polish holding company (PSH)

#### The changes planned in this regard are aimed to:

- modify definitions relevant for PSH;
- clarify provisions, for example those applicable to the one year during which the holding company holds shares in subsidiaries;
- add a simple joint-stock company to the list of entities that are authorized to operate in the PSH regime;
- grant the right for a holding company to use the CIT exemption for dividends under the EU Parent-Subsidiary Directive;
- allow domestic subsidiaries to claim the exemption provided for SEZ or the Polish Investment Zone, under the PSH regime;
- introduce a 100% dividend WHT exemption for entities in the PSH regime (vs. 95% at present).

### Amendments to the provisions applicable to the Estonian CIT taxation

#### The changes planned in this regard are aimed to:

- modify the rules for determination of income from expenditures which are not related to business activities where the assets are used for purposes of conducting business activities and for other purposes;
- change the time limit for the notification of Estonian CIT selection (ZAW-RD);
- clarify that tax liabilities arising from the initial adjustment expire in whole after the end of at least one full flat-rate taxation period (four fiscal years);
- specify precisely the due date of payment of tax on "income from transformation".

### Amendments to the regulations applicable to CFC

#### The changes planned in this regard are aimed to:

- eliminate multiple taxation of CFC in the case of cascading dividend payments within holding structures;
- clarify the current wording of the CFC regulations concerning:
  - the condition of a foreign entity's high profitability relative to its assets (re: asset disposal transactions concluded throughout the year); and
  - definition of a subsidiary for CFC purposes.

### Amendments to the regulations applicable to TP documentation for transactions with tax havens (Article 11o of the CIT Act)

#### The changes planned in this regard are aimed to:

- modify the scope of the documentation obligation for indirect tax haven transactions;
- eliminate the presumption that the beneficial owner has its place of residence in a tax haven;
- increase materiality thresholds for direct and indirect tax haven transactions, which – if exceeded – give rise to the tax obligation.

#### Other planned tax changes are aimed to:

- set out more detailed provisions applicable to loss reporting by entities that comprise a Tax Capital Group (fiscal unity);
- modify the provisions regarding publication of tax forms and tax returns by the Minister of Finance;
- specify rules for classification as tax-deductible costs of social securities contributions associated with revenue under the employment contract and equivalent, in the part sponsored by the payer, contributions to the Labor Fund, the Solidarity Fund and the Guaranteed Employee Benefits Fund;
- modify the provisions governing the refund procedure for tax on revenue from buildings, consisting in reformulation and consequently, simplification of the said procedure by request, as referred to in Article 24b.15 and 16 of the CIT Act;
- changes are also planned to be introduced to other legal acts, including the Tax Code and the PIT Act.

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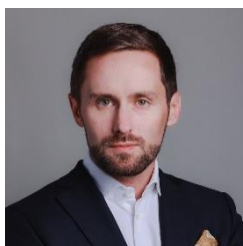
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