

Dividends for domestic holdings nearly tax-free

I. The government wants to grant special privileges to Polish holding companies

Extensive amendments to tax regulations prepared as part of the so-called Polish Deal provide for the introduction of a so-called holding regime (RH). This new tax regime will be available to Polish holding companies with domestic or foreign subsidiaries. It is to be an alternative to the current institution of tax group (TG). The planned preferential holding regime will consist of exempting from CIT 95% of the value of the dividends received by holding companies from their subsidiaries and of fully exempting from CIT the profits from the sale of shares in subsidiaries.

As of 2022, the Polish government wants to introduce a so-called holding regime, which consists of exempting from CIT 95% of the value of the dividends received by holding companies from subsidiaries and of fully exempting from CIT the profits from the sale of shares in subsidiaries.

II. At least 10% of subsidiary shares will be needed

The main condition for taking advantage of the holding regime will be for the holding company to have at least 10% of the subsidiary's shares for at least a year. The draft limits the definition of subsidiaries to companies in which the holding company holds a direct interest of no less than 10% of shares for an uninterrupted period of at least a year and which do not hold more than 5% of shares of another company, investment fund or mutual fund, the total of the rights and obligations in a company without legal personality and other property rights associated with the right to receive benefits as a founder or beneficiary of a foundation, trust or another entity or legal relationship of trust, or of similar rights. According to the lawmakers, this is intended for the holding regime to cover the so-called single-tier structures (of a relatively simple structure of ownership ties). This is meant to prevent the use of such ties for illegal optimizations.



III. New solutions only for Polish tax resident companies

Eligible to take advantage of the RH preference will be holding companies that are limited liability companies or joint-stock companies with Polish tax residence. To limit the transfer of profits from the sale of shares from potentially non-transparent multi-tier groups of companies, the holding company's direct or indirect shareholders will not be permitted to be entities with their place of establishment, management, registration or location in jurisdictions that: apply harmful tax competition; are on the EU list of non-cooperative jurisdictions for tax purposes; with regard to which there is no legal basis to exchange tax information. This will not, however, affect the ability to hold the status of holding company shareholder by natural persons. Irrespective of the above limitations, the new regulations introduce a requirement for the holding company to conduct actual business operations (substance requirement).

IV. Subsidiaries to meet many specific conditions

Under the holding regime, subsidiaries may be both Polish limited liability or joint-stock companies (domestic subsidiary), as well as foreign companies that are taxable persons of foreign corporate income tax, excluding companies without legal personality (foreign subsidiary). In the case of foreign subsidiaries, however, the definition excludes entities that have their place of establishment, management, registration or location in jurisdictions that: apply harmful tax competition; are on the EU list of non-cooperative jurisdictions for tax purposes; with regard to which there is no legal basis to exchange tax information. In addition, the new regulations provide that subsidiaries will not be permitted to hold: more than 5% of shares of another company (domestic or foreign), investment fund or mutual fund, the total of the rights and obligations in a company without legal personality and other property rights associated with the right to receive benefits as a founder or beneficiary of a foundation, trust or another entity or legal relationship of trust, or of similar rights. In addition, companies that apply exemptions as part of a special economic zone or the so-called Polish Investment Zone, will not be able to be subsidiary companies.

V. Dividend received from subsidiaries 95% tax free

The draft provides for a tax exemption for 95% of the value of the dividend received by a holding company from its subsidiaries. The remainder of the dividend, not covered by the exemption (i.e. 5%) would be subject to taxation with CIT on general terms applicable to dividends, i.e. at the rate of 19%. To avoid any doubts it needs to be stressed that that portion of the dividend will not be subject to the exemptions referred to in Article 20 par. 3 and Article 22 par. 4 of the CIT Act (exemption from CIT of certain income from shares of profits of legal persons). The new regulations clearly state that a holding company can either apply the preference under RH, or the mentioned exemptions. It will not be possible to apply both of these preferences. The portion of the dividend that is not covered by the RH exemption, received from a holding company from its foreign subsidiary, may be subject to an avoidance of double taxation method - on general terms, with the stipulation that subject to deduction will only be the tax paid abroad in proportion to the portion of the dividend (i.e. 5%) that is not exempt in Poland.



VI. Not all dividends from subsidiaries subject to preferential taxation

The new regulations provide that no exemption will apply to a dividend from a subsidiary if the conditions specified in Article 24a par. 3 point 3 letters b and c of the CIT Act are met. This, therefore, among others refers to companies that generate at least 33% of their annual income from: dividends and other income from shares of profits of legal persons, from the sale of shares, from debts, from interest and gains on all types of loans, from the interest portion of lease installments, from sureties and guarantees, from copyrights or industrial property rights, including from the sale of such rights, from the sale and exercise of rights to financial instruments, from insurance, banking or other financial activities, from transactions with related parties if little or no economic added value is generated from such transactions. According to the new regulations, these conditions cannot be met by the subsidiary in the tax year in which the dividend is paid to the holding company, or in any of the 5 tax years preceding that year. This limitation will not, however, apply to a subsidiary that is a tax resident of an EU/EEA member state, which conducts actual business operations in that state. The regulations also exclude the ability to apply the exemption to the portion by which the subsidiary reduces its tax burden in its state of tax residence by the dividends paid to the holding company (by adding them to tax-deductible costs or deducting from the tax base).



RAFAŁ KOWALSKI
Head of Tax Department
tel.: +48 22 543 16 00
Rafal.Kowalski@bdo.pl

VII. Income from the sale of subsidiary shares to be exempt from CIT

Irrespective of the exemption for dividends, the draft also calls for the introduction of a preference in the form of an exemption from CIT of income generated by the holding company from the sale of shares in its subsidiary. The exemption will only apply if the buyer of the shares is a party that is unrelated as defined in transfer pricing regulations. To apply the condition, the holding company will need to submit a declaration of intent to apply the exemption to the relevant tax office at least 30 days prior to the sale of the shares. The declaration will also have to contain: information about both parties to the transaction (their first and last names or names, addresses and tax identification numbers); the same information about the subsidiary to be sold; information what share of the subsidiary will be sold (i.e. what portion of the subsidiary's shares will be sold by the holding company); the planned agreement conclusion date. No exemption will apply to the sale of shares in a so-called real estate company.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

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BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl