

Transformation into general partnership is favorable for tax purposes

I. The tax authorities have issued an interpretation on the effects of transforming limited partnerships into general partnerships

In a tax interpretation issued on 15 March 2021 (number 0111-KDIB1-1.4010.9.2021.2.ŚS) the tax authorities confirmed that transforming a limited partnership into a general partnership will allow the partners to avoid taxation of the partnership's income with corporate income tax (CIT). In accordance with the regulations in effect as of 1 January 2021, limited partnerships will in 2021 be given the status of CIT taxable persons. Under the new regulations, a limited partnership becomes CIT taxable as of 1 January 2021. That is the basic rule. A limited partnership (or in reality its partners) may, however, decide to apply the new rules to the partnership, its income and costs associated with participating therein as of 1 May 2021. In such cases, the limited partnership will obtain the status of a CIT taxable person as of 1 May 2021.

II. Limited partnership's transformation will make it possible to avoid CIT

After the change, tax will be paid twice. First the partnership will pay tax (CIT) on the income earned in the tax year. Then, after profits from the already taxed income are paid out to the partners, tax (PIT) on those payments will be paid by the partners. To mitigate the effects of this change, the regulations provide for a special exemption. No tax (PIT) will be levied on 50% of the revenue earned by a limited partner (but not each one, as several exceptions apply), but no more than PLN 60 thousand per year (the limit applies to each limited partnership in which a given entity is a limited partner). Limited partnerships will also not be able to apply the so-called Estonian CIT. As these taxation methods are less favorable than those in effect thus far, some of taxable persons have decided to transform their partnerships into, for example, general partnerships. These may, however, also become CIT taxable if they fail to submit the new information about their partners.

III. Transformation is not the same as liquidation

Under general rules, transformation of a limited partnership into another partnership (general partnership) is not the same as its liquidation, but rather it is its continuation in another legal form. In accordance with the principle of continuation of the entities taking part in a transformation, the assets of the partnership that is being transformed will as of the date of the transformation become the assets of the transformed partnership. The principles of such universal succession do not include the tax effects of so-called tax succession, as the matter of succession of tax related rights and obligations associated with entity transformations are regulated by the Tax Ordinance. They are different than the general rules arising out of civil and commercial law.

A general partnership formed in 2021 from a limited partnership will not become CIT taxable if prior to the registration of the transformed general partnership the entity being transformed (limited partnership) submits information about the taxable persons who hold rights to the profits of the general partnership, either directly or indirectly through non-taxable person entities.



IV. Tax succession includes all tax related rights and obligations

As explained in the interpretation – the regulations of the Tax Ordinance provide that a legal entity formed as a result of: a transformation of another legal person or transformation of an entity without legal personality – enters into all of the legal rights and obligations of the transformed person or entity. These rules also apply to a commercial partnership formed as a result of the transformation of another entity without legal personality or company. They therefore apply to a transformation of a limited partnership (partnership) into a general partnership (partnership). And so the process of entity transformation involves tax succession of the transformed entity.

V. New entity with legal capacity as of registration date

As the interpretation explains, under tax law the transformation of one commercial partnership into another partnership results in the loss of legal capacity by the partnership that is being transformed, whereas the transformed partnership acquires legal capacity as of the date of entry in the court register. Tax succession excludes only those rights and obligations that were held by the shareholders of a company, but are not present at partnerships and thus such rights and obligations cannot after the transformation be transferred onto a partnership whose partners are subject to taxation with personal income tax.

VI. General partnership will avoid CIT if it submits a declaration about its partners

In accordance with the regulations in effect as of 1 January 2021, general partnerships with registered offices or managements in the territory of Poland, whose partners are not only natural persons, in order to maintain the status of a tax-transparent entity are before the beginning of (each) financial year required to submit information on CIT taxable persons and PIT taxable persons who hold, directly or indirectly through non-taxable person entities, rights to the profits of the general partnership. They are also required to update this information if there is a change in the make up of the partners (taxable persons) within 14 days of the date of such changes.



VII. Information about partners must be submitted by limited partnership that is being transformed

In the interpretation the tax authorities explain that in order for a general partnership that is formed in 2021 from a limited partnership to not become CIT taxable, it must submit to the tax office the information referred to in Article 1 par. 3 point 1a letter a of the CIT Act before the transformation is registered - if in fact the transformation of the limited partnership into a general partnership does not lead to a change in the partners of the partnership or in the rights of its partners to the profits of the transformed partnership (formed as a result of the transformation). In this case, the information is to be submitted by the partnership that is being transformed (limited partnership) as the legal predecessor of the general partnership. In the absence of the declaration the general partnership will be subject to taxation with CIT.

VIII. No CIT after transformation into general partnership and submission of declaration

In the summary of their interpretation the tax authorities state that the submission by the general partnership formed from a limited partnership of the information referred to in Article 1 par. 3 point 1a letter a of the CIT Act (in the wording in effect as of 1 January 2021), i.e. of information on CIT taxable persons and PIT taxable persons who hold, directly or indirectly through non-taxable person entities, rights to the profits of the general partnership, will be effective in the sense that the general partnership that is the legal successor of the limited partnership (formed as a result of the transformation) will not become a CIT taxable person.



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



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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