

Government plans to change withholding tax collection

I. Changes under Polish Deal to organize withholding tax regulations

The extensive amendments to tax regulations prepared as part of the package of changes under the so-called Polish Deal call for changes in withholding tax collection rules. Among others, the changes consist of narrowing the subjective and objective scope of the application of WHT refund procedure. They will also broaden the subjective scope of clearance opinions by the preferences provided for in double-taxation treaties (i.e. reduced withholding tax rates or exemption from withholding tax). In addition, the changes cover the area of payments made via entities that keep securities accounts and omnibus accounts, payments from State Treasury bonds, as well as payments to so-called foreign permanent establishments located in Poland. Interestingly, the changes are being introduced under the banner of “modernizing withholding tax rules”. They are to become effective as of 1 January 2022.

II. Collection of withholding tax to prevent double taxation

The term “withholding tax” (WHT) refers to flat income taxes (personal and corporate) withheld by remitters whose residence, place of establishment or so-called foreign permanent establishment is located in the state where income is generated. Polish withholding tax is withheld by remitters with their place of residence, business establishment or foreign permanent establishment in Poland. It is withheld by remitters from certain income (including dividends, interest, license fees). Withholding tax is referred to in the context of a tax collected on certain income generated in Poland by non-residents who are natural persons or other entities. In certain cases it is also collected from residents (e.g. when a dividend is paid to a domestic entity).

III. Postponement of changes in WHT to stop at the end of 2021

To recap, significant changes in WHT were introduced by Poland in 2019 based on the Act of 23 October 2018 amending the Corporate Income Tax Act, the Personal Income Tax Act, the Tax Ordinance and certain other acts (Journal of Laws item 2193 with subsequent amendments). The changes consisted of the introduction, to a certain extent, in place of relief applied at the moment of payment of the amount due by the remitter, of a requirement for the remitter to collect the tax at the Polish rate, combined with a tax refund procedure. Application of these rules has for some time been suspended. The minister of finance has thus far issued nine decrees that limit or exclude the application of the WHT refund procedure - of which five pertained to the CIT Act and four limited and excluded this procedure under the PIT Act. The decrees de facto limited the application of the WHT procedure to six-month periods.

Changes planned to the regulations on withholding tax collection are to narrow the subjective and objective scope of tax refund procedure. Among others, refunds would no longer cover amounts due for intangible services. Whereas the scope of clearance opinion is to be broadened, and its name changed to preference opinion.



IV. Withholding tax to only be collected on certain payments

In accordance with the original provisions from 2019, with regard to CIT withholding tax is collected on, among others, income generated by non-residents on: interest, copy and neighboring rights, fees for performance, entertainment, sports, advisory and accounting services, as well as certain fees for the transport of cargo and passengers accepted for carriage in Polish ports by foreign commercial shipping companies. The tax is also collected on income earned by both residents and non-residents from dividends and other income from shares in the profits of legal entities with their place of establishment or management in Poland. The changes planned for 2022 narrow the subjective scope of the WHT refund procedure. This narrowing consists of excluding payments for intangible services (for related parties, a new procedure of so-called profit shifting will be introduced to cover intangible services, license fees and debt financing) from the procedure. At the same time, the objective scope will be narrowed: to fees paid to related parties (as defined in transfer pricing regulations) and to payments to companies that are not Polish tax residents.

V. Withholding tax limit calculated separately for two income categories

Nothing will change with regard to limits. The new tax collection procedure provides for a requirement to collect WHT if the total of the payments exceeds two million zlotys. In such cases, the tax is collected on payments that exceed this amount. For amounts in excess of PLN 2 million (on the excess above this amount) the remitter is required to collect the tax at the Polish rate, whilst the taxable person has a right to apply for a tax refund insofar as its collection would lead to excessive (double) taxation. This would take place in one of two forms. First, if no tax is paid – by submitting to the tax authorities a declaration of eligibility for an exemption, or by obtaining a clearance opinion. Second, if the tax has been paid and the taxable person wants to recover it – by submitting a refund application.



VI. Certain rules relating to duty of care will change

The regulations obligate remitters to exercise due care when verifying the conditions for the application of an exemption or preferential WHT rate and when classifying a payment recipient as a beneficial owner based on its amended definition. Certificate of residence also continues to be an essential document in the process of correctly documenting the right to an exemption from withholding tax. It is a document issued by a relevant tax administration organ, containing information about the place of residence (for natural persons) or place of business establishment (for legal entities) of the taxable person. However, after the regulations change in 2022, due care will also be evaluated from the perspective of the links between the remitter and taxable person (in addition to the nature and scale of the remitter's operations).

VII. It will be possible to apply for a preference opinion

After the regulations change in 2022, it is to be possible to obtain a "preference" opinion, also for the purposes of non-collection or application of a lower rate in accordance with double-taxation treaties (i.e. when reduced withholding tax rates or exemption from withholding tax applies). It may be applied for by the taxable person, remitter irrespective of whether he has "incurred the economic burden of the tax", as well as by an entity that makes payments via entities that keep securities accounts. Applications for the issue of preference opinions will be filed in electronic form corresponding to the logical structure available in the Public Information Bulletin on the webpage of the office servicing the minister of finance. Preference opinions will be issued without unnecessary delay, no later than within 6 months of the date of receipt of the application by the tax authority. A preference opinion application will be subject to a fee of PLN 2000, payable to the tax authority's account within 7 days of the application's filing date, under the pain of being left unprocessed. Opinions will be valid for 36 months.



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



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

BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice.

BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

The last distinctions for the company are related to the Rankings:

Companies and Tax Advisors of Dziennik Gazeta Prawna for 2020:

■ **1st place The Best Tax Advisor in the category of medium-sized companies**

The 2020 rankings prepared by the Rzeczpospolita and Parkiet dailies:

■ **1st Most Active Firm on the Stock Exchange**

■ **3rd Best Auditor of Listed Companies**

■ **5th Best Audit Firm**

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