

The Polish Deal

The Polish tax reform legislation ("Polish Tax Deal") has been passed by all statutory bodies and published in the Journal of Law. The changes will significantly affect several areas of taxation including Corporate Income Tax (CIT), Personal Income Tax (PIT), and Value Added Tax (VAT). Most of the provisions introduced by the Polish Tax Deal will be effective as of 1 January 2022. Below we present a selection of the changes that may affect international business in Poland.



A CHANGES IN CIT

1. Incentives supporting innovations

- 1.1. **The taxpayers benefiting from the IP Box taxation (based on preferential rate amounting 5% for intellectual property income) become eligible to benefit from both R&D relief and IP Box.** I.e. the taxpayers will be allowed to deduct as the R&D relief the expenses related to IP and incurred for R&D activity which resulted in creating or development of the IP and is subject to preferential 5% CIT rate.
- 1.2. **R&D relief:** taxpayers benefiting from the R&D relief will be able to apply increased deductions from their tax base in relation to qualified R&D HR (employment) expenses (200% instead of 100%). The taxpayers having the status of research and development centres (R&D Centres) will be able to benefit from a deduction of eligible R&D costs amounting to 200% (instead of 150%).
- 1.3. **Relief for innovative employees:** The taxpayers unable to use the credits (additional deductions) under R&D relief from their taxable base will be allowed to deduct them from advance payments for personal income tax of employees. This relief is applicable only for personal income tax advance payments of employees (employed on the basis of an employment contract or civil law contracts) spending at least 50% of time on R&D activities.
- 1.4. **Robotization relief:** The taxpayers conducting manufacturing activities will eligible to (additionally) deduct from their tax base an amount of 50% of expenses incurred for robotization of production. The amount of the deduction may not exceed the amount of income earned by the taxpayer in the tax year from revenues other than revenues from capital gains. The relief for robotization will be available only until the end of the fiscal year, which will start in 2026.
- 1.5. **Prototype relief:** The taxpayers will be allowed to (additionally) deduct from their tax base 30% of qualifying expenses incurred for the purpose of trial production of the new products or launching the new products on the market. The deduction is limited to 10% of income in a tax year.

Incentives for innovators:

- IP Box
- R&D relief
- relief for innovative employees
- robotization relief
- prototype relief

2. Other incentives

- 2.1. **Expansion relief:** The taxpayers will be allowed to (additionally) deduct from their tax base certain qualifying expenses incurred for the purpose of increasing revenues from sales of products or generating revenues on the new markets (such as e.g. costs related to participation in trade fairs, marketing activities, preparing documentation for obtaining certificate for goods or trademark or preparing offers). The amount of the deduction cannot exceed the amount of PLN 1m in a tax year.
- 2.2. **Consolidation relief:** The taxpayers will be allowed to (additionally) deduct from their tax base certain qualifying expenses incurred for purchasing shares in an unrelated company conducting similar or complementary business activity (such as expenses for legal services related to the purchase of shares or stocks, including their valuation (due diligence), taxes charged directly on this transaction, notary, court and tax fees). The amount of the deduction cannot exceed the amount of PLN 250k in a tax year.
- 2.3. **Initial public offering (IPO) relief:** The taxpayers issuing shares on the regulated market will be allowed to (additionally) deduct certain qualifying expenses related to the IPO. The additional deduction will amount to: (i) 150% of expenses incurred to prepare prospectus and notary / court fees and (ii) 50% of expenses of legal and financial advisory (up to PLN 50k). The taxpayer is entitled to benefit from this relief only once.
- 2.4. **Sponsoring relief:** The taxpayers will be allowed to (additionally) deduct from their tax base certain qualifying expenses incurred for sponsoring activities (such as e.g. expenses for sport, culture and education). The additional deduction will amount to 50% of expenses incurred for sponsoring activities and cannot exceed the amount of income in a tax year.

3. Introduction of the holding companies regime.

Holding companies meeting certain requirements will be eligible for: (i) exemption from CIT of 95% of dividends received from subsidiaries and (ii) full exemption from CIT of capital gains from the sale of shares of subsidiaries for unrelated entities.

Only a limited liability company or a joint stock company, being a Polish tax resident, may be considered a holding company. The holding requirement of at least 10% of shares of a subsidiary and holding period of 1 year applies. Both the holding company and the subsidiary cannot belong to a tax capital group and cannot benefit from tax exemptions (e.g. activity in the special economic zone). The holding company must conduct genuine business activity in Poland. The capital gains from the sale of real estate rich companies are not exempt. There are also other requirements that need to be analysed in details.

Other Incentives:

- expansion relief
- consolidation relief
- IPO relief
- sponsoring relief

Only a limited liability company or a joint stock company, being a Polish tax resident, may be considered a **holding company**.

4. Minimum CIT on revenues

A new tax on revenues will be applicable to the taxpayers who:

- a. report a tax loss on operating activities (i.e. other than capital gains) in a given year,
- b. report an income (from operating activities) to revenues (from operating activities) ratio not exceeding 1%.

The minimum CIT on revenues will amount to 10% of the tax base, which, as a rule, will be the sum of the following items:

- 4% of revenues from operating activities (i.e. other than capital gains),
- the financing costs incurred for the benefit of related entities exceeding 30% of the tax EBITDA,
- the costs of certain intangible services incurred for the benefit of related entities and entities from "tax havens" exceeding PLN 3,000,000 + 5% of EBITDA,
- deferred income tax resulting from the disclosure of certain intangible assets.

The minimum CIT on revenues will not apply e.g. to: (i) entities from the financial sector, (ii) companies operating under a simple ownership structure with shareholders being natural persons and without subsidiaries, (iii) start-up companies (for the first 3 years of operations) or (iv) entities experiencing a decrease in revenues of at least 30%.

5. Tax on shifted profits

The tax on shifted profits at the rate of 19% is to be imposed on certain expenses incurred directly or indirectly for the benefit of a related entity.

The shifted income arises if:

- a. the actual income tax paid by the related entity for the year in which they obtained the payment, is at least 25% lower than the amount of income tax that would be due if the income of this entity was taxed at 19% tax rate, and
 - b. the costs (payments): (i) treated as tax deductible costs, being deductible from income, tax basis or tax of the related entity, or (ii) paid by the related entity as dividends or other dividend-type income for the year in which it received the payment
- constituted at least 50% of the revenues obtained by the related.

The costs being treated as shifted income include: (i) costs of certain intangible services, (ii) certain royalties / license fees, (iii) costs of certain credit default swaps, (iv) certain financing costs and (v) fees for transfer of functions, assets or risks on condition that the sum of these costs incurred in a tax year constitutes at least 3% of the sum of all tax deductible costs.

The amount of the minimum CIT on revenues will be deductible from the CIT calculated based on **general rules**.

The tax on shifted profits **will not be applicable** if the related entity receiving payments directly or indirectly is subject to the taxation and conducts genuine business activity in UE / EEA member state.

6. Changes in the WHT collection mechanism

The pay & refunded mechanism for withholding tax which was introduced from 1 January 2019 and suspended for 3 years will be finally introduced. However, the pay-&-refund system will be (i) limited only to payments between related entities and (iii) payments constituting remuneration for intangible services will be excluded from this mechanism (so that effectively it will apply to dividends, royalties and interest payments).

With respect to mechanisms mitigating the pay & refund approach, the scope of opinions confirming right to apply WHT reduction will be extended so that it will be possible to obtain the opinion both (i) confirming WHT exemption under domestic rules and (ii) preferential WHT rate resulting from tax treaties.

The WHT agents will be also entitled to confirm payment recipients' residence by obtaining a copy of a tax certificate if there are no doubts as to the authenticity of the document.

7. Limitations on tax neutrality of restructuring transactions

Neutrality of the reorganization transactions (i.e. exchange of shares, mergers, demergers) will be subject to additional conditions such as:

- a. shareholders shall not be taxed on condition that (i) the shares being subject to reorganization transaction were not acquired as a result of an exchange of shares, a merger or a demerger and (ii) the tax basis of shares issued, adopted by a shareholder is not higher than the tax basis of shares being subject to reorganization transaction;
- b. the acquiring company shall not be taxed on condition that (i) the assets acquired are booked for tax purposes by the acquiring company at the values resulting from the tax books of the merged / demerged company and (ii) such assets are allocated to activities carried on in Poland.

Under the new regulations the tax neutral exchange of shares can take place where a company acquires shares from the same shareholder in more than one transaction within a period not exceeding 6 months from the month in which their first acquisition took place, if as a result of these transactions the conditions for exchange of shares are met (so far this requirement related for more shareholders).

8. New taxation rules for payments to related entities and financing costs

8.1. "Hidden dividends"

Under these rules certain costs incurred by a taxpayer being related party to the service provider (or the service provider is a related party to the shareholder of the taxpayer) described as "hidden dividends" will be treated as non-deductible for CIT purposes.

The scope of opinions confirming right to apply WHT reduction will be **extended**.

Additional conditions for neutrality of reorganization transactions.

The costs will be treated as hidden dividends if:

- a. the amount of the costs or the time of the payment of costs is contingent on the profit or the amount of the profit earned by the taxpayer, or
- b. a taxpayer acting in a rational manner would not incur such costs or would bear lower costs if a comparable service was performed by an unrelated entity, or
- c. the costs include remuneration for the right to use assets that were owned by the shareholder or an entity related to the shareholder before the establishment of a taxpayer.

The last two conditions are not applicable if the sum of costs incurred by the taxpayer in a tax year, constituting a hidden dividend, is lower than the amount of gross profit generated by the taxpayer.

Given the controversies as to the scope of this limitation its entry into force was postponed to 1 January 2023.

8.2. **The limitation of the amount of tax deductible costs arising from certain intangible services including licence fees paid to related entities (art. 15e of the CIT law) has been repealed** and will not be in force from 1 January 2022.

8.3. **The interest barrier rules** has been modified so that the limit above which financing expenses are not tax deductible will be set as: either 30% the so-called tax EBITDA or PLN 3m. Currently, the taxpayers can benefit from the limit of PLN 3 million plus 30% tax EBITDA.

8.4. **Additional limitation of deducting financing costs** has been introduced. Non-deductible will be the costs of financing (i) granted by a related entity and (ii) used directly or indirectly for certain capital transactions (e.g. acquisition or subscription of shares, acquisition of interest in a partnership, making supplementary payments to buy-back of shares).

8.5. Some changes has been also introduced to **transfer pricing obligations**. It includes especially simplification of signing statement obligation which has been added to TPR form, new exemptions from transfer pricing documentation obligation and extension of deadlines for preparing TP documentation. Also the rules for TP adjustments were loosened (it is not obligatory to confirm the adjustment in the tax return) and the deadline to submit TP documentation for on the tax authority's demand was extended from 7 days to 14 days.

9. Limitations for real estate sector

9.1. **The allowed level of deductibility of tax depreciation for the real estate companies is limited only to the value of the accounting depreciation**. In case the real estate company recognizes real estate as an investment for accounting purposes there is no accounting depreciation and as a result the tax depreciation will be excluded from deductible costs in most cases.

New taxation rules for payments to related entities and financing costs:

- „Hidden dividends”
- Limitation of the amount of tax deductible costs arising from certain intangible services
- New interest barrier rules
- Additional limitation of deducting financing costs
- Changes in the transfer pricing obligations

9.2. The residential real estate buildings will not be subject to tax

depreciation. The investors will be allowed to recognize the cost of purchase upon sale of such real estate. The real estates purchased before 2022 will be subject to the new regulations starting from 1st January 2023.

10. The rules for the tax capital groups ("PGK") have been loosened modified.

The crucial changes include:

- a. repeal of the minimum 2% profitability requirement,
- b. possibility to settle PGK companies tax losses reported before PGK;
- c. the reduction of the average share capital for each company to PLN 250,000 (the current limit of PLN 500,000);
- d. subsidiaries can own shares in other companies forming the PGK (currently only the parent company can hold such shares);
- e. PGK agreement can be entered in a written form (notarial deed will no longer be required);
- f. restructuration actions between PGK companies are allowed.

11. Modification of the regulations on the controlled foreign company (CFC)

As CFC company in Poland will be also considered an entity whose at least 50% of shares or voting rights are directly or indirectly owned by the Polish taxpayer together with other taxpayers having their seat or effective place of management in Poland. The scope of definition of CFC companies has been also expanded by companies (a) which 50% of assets constitute assets of high value that do not generate profits, (b) which income corresponds 8% of its assets' value.

12. Modification of the rules for the so-called "Estonian CIT"

New group of the taxpayers is allowed to take advantage of this form of taxation - i.e. limited partnerships and joint-stock partnerships. It will also not be required to incur the minimum level of investment expenditures. The tax rates for the "Estonian CIT" have also been decreased from 15% to 10% for small taxpayers and from 25% to 20% for other taxpayers.

13. Definition of the place of management on the territory of Poland

The taxpayer will have a place of management in the territory of the Republic of Poland, inter alia, when the day-to-day affairs of the taxpayer will be conducted in an organized and continuous manner, from the territory of Poland based in particular on: (a) an agreement, decision, court decision or other document regulating the establishment or operation of the taxpayer, or (b) powers of attorney, or (c) relations within the meaning of the provisions on transfer pricing.

Changes in the:

- rules for the PGK
- regulations on the CFC
- rules for the "Estonian CIT"

Taxpayer's **place of management** on the territory of Poland.

B INVESTMENT AGREEMENT FOR STRATEGIC INVESTORS

The investment agreement (also referred to as “*Interpretation 590*”) concluded with the Ministry of Finance will set forth certain tax consequences of the investment that a given investor intends to carry out in Poland. It will be binding on the tax administration and should enable the business to obtain comprehensive tax clearance regarding its investment in Poland. The investment agreement is available to investors who plan or have started an investment in Poland the value of which amounts to at least PLN 100m (PLN 50m from 2025).

The objective of the Investment agreement is to provide flexibility, completeness, and comprehensiveness of the determination of the tax consequences of an investment project as the investment agreement can cover the following instruments: (i) individual tax rulings, (ii) GAAR opinions, (iii) APA, (iv) binding tariff information (VAT) and (v) binding tariff information (excise duty).

The investment agreement will take the form of agreement (not decision) negotiated with the Ministry of Finance and will be valid for a determined period, not longer than five tax years (with a possibility of extension).

The following fees will apply: PLN 50,000 for an initial application and PLN 100,000 to 500,000 for conclusion of the investment agreement (the final fee will depend on the value of the investment and scope of the investment agreement).

The investment agreement will be binding on the tax administration and should enable the business to obtain comprehensive tax clearance regarding its investment in Poland.

C CHANGES IN PIT

1. Key changes impacting labour costs

- a. **Tax rates thresholds:** The threshold for 17% tax rate is increase from approx. PLN 85 to PLN 120k annually; 32% tax rate will apply above that threshold.
- b. **Tax free allowance:** Tax free allowance for employees and other taxpayers taxed under the standard rules (progressive taxation) is increased from approx. PLN 3k to PLN 30k annually.
- c. **Tax relief for “middle class”:** Employees and persons carrying on business activities (if taxed under the standard rules) whose annual revenues are between approx. PLN 68k and PLN 133k will be allowed to reduce the tax base by an amount calculated pursuant to a special formula (the highest reduction in case of revenues of approx. PLN 100k annually).

PIT changes regarding labour costs:

- Increased tax rates thresholds
- Increased tax free allowance
- Tax relief for “middle class”
- Elimination of health insurance contribution deductibility
- Increased health insurance contributions for entrepreneurs
- Exemption for taxpayers changing tax residence to Poland

d. Elimination of a possibility to deduct the health insurance

contribution from PIT liability: until 2021, 7.75% out of 9% of health contribution financed by an individual (which amounts to 9% of the base calculated as taxable revenues less social security contributions financed by an individual) was deductible from due tax and decreased the effective tax burden. Starting from 2022 the health insurance contribution cannot be at all deducted from due tax and the effective tax burden shall increase.

e. Increase of health insurance contributions for entrepreneurs settling PIT in line with general rules (up to 9% of the actual income), entrepreneurs applying the flat 19% PIT rate (up to 4.9% of the actual income) or the lump-sum PIT (the amount of the premium will depend on the income and the average remuneration).

f. Taxpayers changing tax residence to Poland: exemption of up to PLN 85k annually (four years) of income from employment, personal services or business activity of taxpayers who changed the tax residence to Poland from EU/EEA and certain other states (provided that a taxpayer was a resident abroad for at least 5 years and was not a resident in Poland during previous 3 years).

2. Tax relief for High-net-worth individuals (HNWI) establishing tax residency in Poland

HNWI changing the tax residency to Poland may be taxed on their non-Polish revenues / income on lump sum tax amount (effectively, PLN 300k annually, irrespective of the amount of non-Polish revenues) provided that an individual has not been a resident in Poland during at least 5 out of 6 preceding tax years. The tax relief is available for 10 years.

3. Other

3.1. Taxation of private use of company cars by employees: The criteria for flat taxation of private use of company cars by employees change and the amount of taxable revenues will depend on the engine type or power instead of engine capacity (monthly PLN 250 for electric cars or engines up to 60KW and PLN 400 for others).

3.2. Beneficial changes in lump sum PIT for entrepreneurs: B2B contractors (entrepreneurs) rendering certain types of services may opt for an alternative scheme of taxation of revenues (instead of taxation of income) from business activities. Changes introduced from 2022 decreases tax rates and introduces more beneficial rules of calculation of health contribution for entrepreneurs who opted for the alternative scheme of taxation of revenues (in particular, IT specialists who often operate as entrepreneurs).

Other PIT changes:

- Tax relief for High-net-worth individuals
- New criteria for flat taxation of private use of company cars by employees
- Alternative scheme of taxation of revenues for B2B contractors (instead of taxation of income)

1. Introduction of VAT groups:

The Polish Tax Deal will introduce the possibility to create VAT groups for entities having financial, economic, and organizational relationships. A VAT group may be established by taxpayers with their registered office in the territory of Poland and entities conducting business activity in the territory of Poland through a branch.

2. Introduction of an option to tax certain financial services

The Polish Tax Deal will introduce the option of taxing financial services that currently benefit from VAT exemption. A taxpayer conducting business in the field of financial services will have an option to choose whether to apply the VAT exemption or to choose the option of taxing the services.

The provisions on VAT groups are to **enter into force on 1 July 2022**.

F PENAL FISCAL LIABILITY UPON CORRECTIONS OF TAX RETURNS

It has been limited the right to apply a voluntary disclosure as a result of submitting effectively the tax return correction. In situation when penal fiscal proceedings related to incorrect tax settlements are initiated the persons responsible for these settlements cannot benefit from exclusion of penal fiscal liability as a result of submitting the effective tax return correction covering the settlements.

Limited right to apply a voluntary disclosure as a result of submitting effectively the tax return correction.

CONTACT



Sławomir Boruc
Partner

Slawomir.Boruc
@bakermckenzie.com



Katarzyna Kopczewska
Partner

Katarzyna.Kopczewska
@bakermckenzie.com



Piotr Wysocki
Partner

Piotr.Wysocki
@bakermckenzie.com



Paulina Wojszko-Maciulewicz
Senior Associate

Paulina.Wojszko-Maciulewicz
@bakermckenzie.com



Piotr Maksymiuk
Senior Associate

Piotr.Maksymiuk
@bakermckenzie.com