GARRIGUES

COMMENTARY
TAX POLAND

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MAJOR INCREASE IN THE TAX BURDEN, BUT ALSO GREATER SCOPE FOR LAWFULLY MANAGING THE TAXABLE RESULT IN THE LATEST LEGISLATIVE PROPOSALS FOR AMENDMENT OF CIT AND PIT LAWS

In recent days a legislative proposal has been published which would amend laws on tax treatment of income (bill of 6 July 2017). According to the statement of reasons for the proposal, the aim is to further tighten up the tax system and (partially) implement the ATAD.

The proposal would increase the taxable base declared by many taxpayers and lead to a more complex tax assessment and payment process. To a lesser extent, the proposal also contains some regulations that would be favourable to taxpayers.

The most important changes proposed in the bill are as follows:

1. MINIMUM TAX ON COMMERCIAL REAL ESTATE

Owners of certain kinds of commercial buildings (shopping centres, department stores, smaller stores and fashion boutiques, other types of retail and service premises, and office buildings specified according to the Classification of Fixed Assets) of a value of more than PLN 10 million will be subject to additional income tax at a flat monthly rate of 0.042% of the building's initial value, regardless of the revenue that is generated in practice. The tax will be deductible from income tax assessed according to the rules in place at the moment. If there is insufficient income to deduct tax at the flat rate in a particular year, it will not be possible to deduct the tax in future years.

2. SEPARATE TREATMENT OF SOURCES OF INCOME

Under the proposal, it will not be possible to combine income from capital gains (and this includes income generated by sale of shares, from dividends, redemption of shares, and winding up of a business) with income from other sources (and as a general rule this will also apply to income from interest).

The system of recording income from different sources separately might mean that general costs have to be categorised according to the individual sources of revenue. Under interim legislation, the requirement of separate treatment of costs will also apply to costs generated before the amendments come into effect.

3. LIMIT ON EXPENDITURE ON INTANGIBLE SERVICES, AS WELL AS REMUNERATION AND THE EMPLOYEE BENEFIT FUND

Under the amendment, costs of certain kinds of intangible services of a value in excess of PLN 1.2 million (and this includes services obtained from non-affiliates) could be tax-deductible for up to **5% of EBITDA**. This limit will apply in particular to **royalties, advertising services, legal services, guarantees, recruitment services, and others**. Expenses not deducted in one year will be deductible in subsequent years.

Under the new legislation, **awards and bonuses for the management board** (related to share in financial result), as well **as contributions to the employee benefit fund**, will not be tax-deductible.

4. MORE UNDERCAPITALISATION RESTRICTIONS

The current limits will be extended to cover all interest, **including interest paid to non-affiliates**, while the limit up to which they will be tax deductible will be 30% of EBITDA. Only the difference between the interest gained and paid will be subject to the limits.

The limits will not apply to financial institutions and loans extended within a tax capital group. Interest on profit participation loans will not be tax deductible.

5. AMENDMENTS TO CFC REGULATIONS

On the one hand, these new regulations will increase the stake required in a foreign company for the company to qualify as a CFC from 25% to 50%, while on the other hand only a 25% portion of *passive income* in the income of a company of that kind will be needed for it to be classified as a CFC (assuming the other requirements are met). The amount of tax due in a particular jurisdiction will be ascertained in relation to the true tax rate, and not nominal tax rate (as is the case at the moment).

6.EASING OF CONDITIONS FOR TAX CAPITAL GROUPS

It will be easier to set up a tax capital group as the average share capital required of the member companies will be **PLN 0.5 million (and not PLN 1 million, as is the case at the moment).** Another more convenient change will be a decrease in capital affiliations necessary to form a group from 95% to 75% and profits from 3% to 2%. Capital groups will continue not to be subject to the obligation to draw up transfer pricing documentation with regard to the group's internal transactions.

In certain cases, the legislature has taken a more rigorous approach to the consequences of failure to meet the requirements for forming a group while it is in operation.

7. HIGHER VALUE OF FIXED ASSETS WHICH CAN BE SUBJECT TO ONE-OFF DEPRECIATION

The limit applicable to the initial value of fixed assets that can be subject to one-off depreciation will be increased from PLN 3 500 to PLN 5 000.

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