

ANNUAL REPORT



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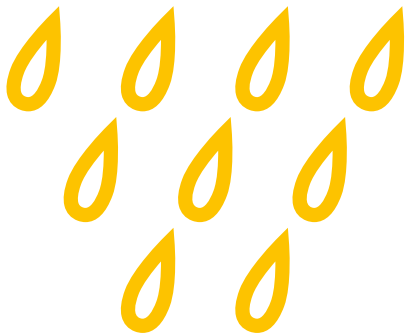
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POLAND: TAX DEVELOPMENTS 2019

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CURRENT TAX CLIMATE

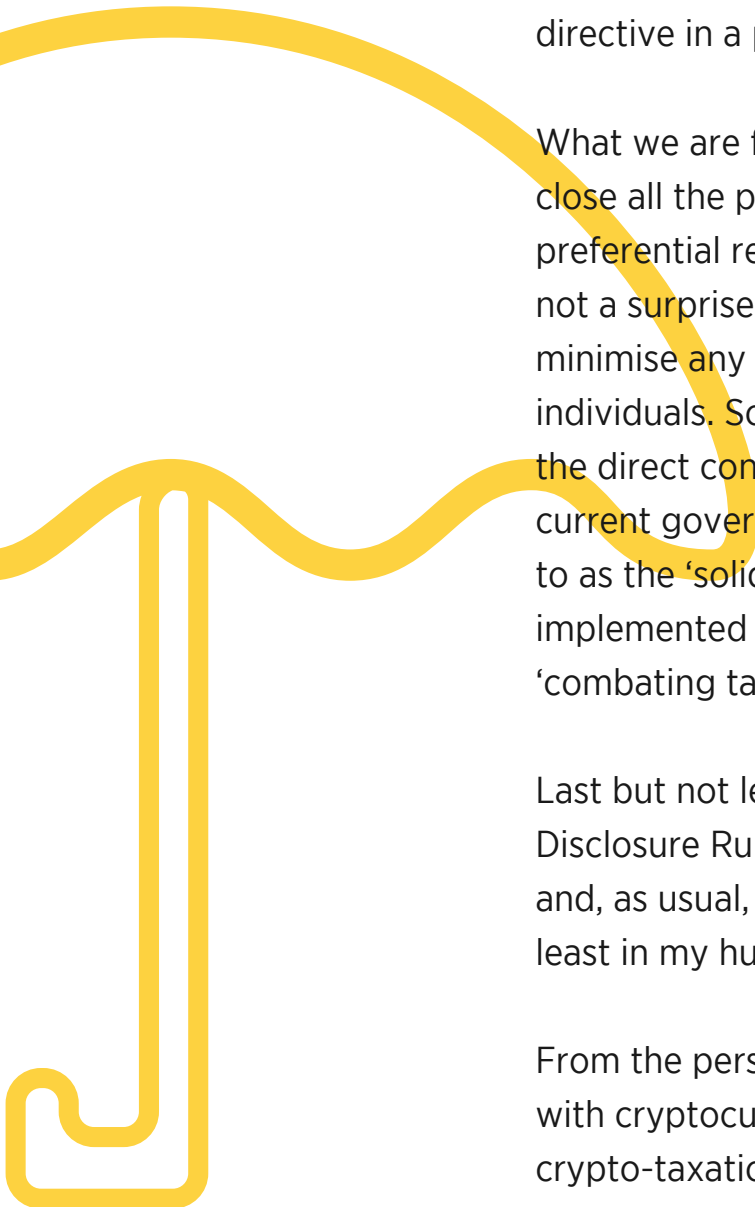


It's no surprise for anyone engaged in international tax planning that as in the previous years, the Polish Corporate Income Tax Law (hereinafter: CIT Law) and the Personal Income Tax Law (hereinafter: PIT Law) have been heavily amended. Some of the changes are made as the effect of the implementation of ATAD, but as always, the Polish government has implemented this directive in a particular manner.

What we are facing in Poland is simultaneous work to close all the possible loopholes and introduce preferential regimes for innovative taxpayers. What is not a surprise, the new rules are very often aimed to minimise any potential optimisation at the level of the individuals. Some of the amendments in the tax law are the direct consequence of the social policy of the current government (such as the new tax rate referred to as the 'solidarity burden') and some are implemented within the wide programme of 'combating tax/VAT fraud').

Last but not least, Poland introduced Mandatory Disclosure Rules way before it was required to do so, and, as usual, the Polish MDR went a little too far (at least in my humble opinion).

From the perspective of a tax advisor working closely with cryptocurrency engaged clients, the new rules of crypto-taxation has also been mentioned in this paper.



MANDATORY DISCLOSURE RULES – NEW WAVE OF REPORTING

The new MDRs in Poland introduce changes resulting from the directive of the Council of the European Union (EU) 2018/822 of 25 May 2018. Poland introduced the changes as of 1 January 2019, much faster than the date required by the directive, namely 1 July 2020. The MDRs introduced by Poland specify 24 hallmarks, indicating the potential risk of tax avoidance.

According to the directive, only 11 of them require the existence or suspicion of tax benefits, the remaining ones require notification in each case.

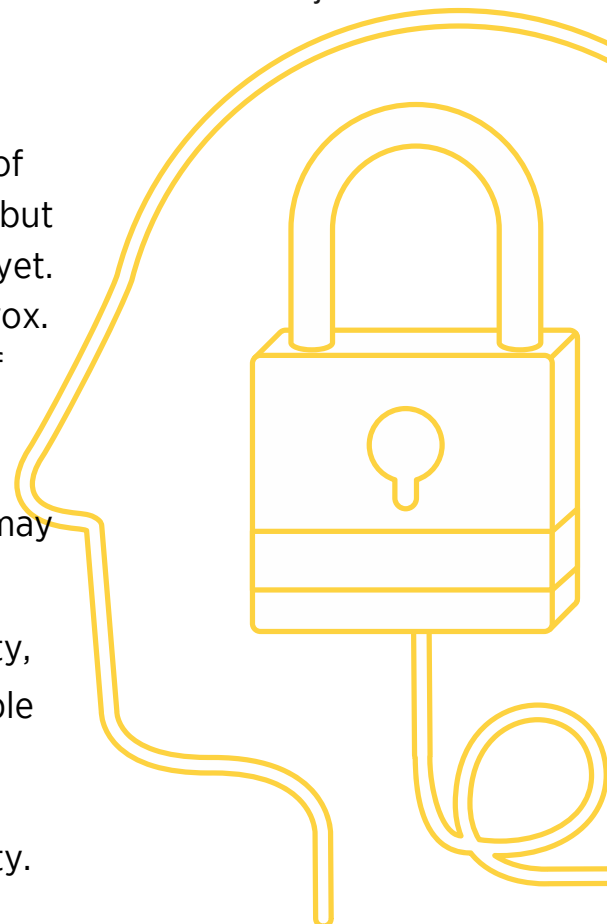
What is important to note, is that the Polish rules require not only reporting the international tax schemes but also the domestic one, which in many cases causes uncertainty as to whether applying for a tax relief or a tax deduction is subject to MDR reporting.

Polish MDRs are unclear in many aspects. The Ministry of Finance has issued official tax explanations on the law, but there is no established practice of applying them as of yet. What is more surprising is that the regulations are approx. 100 pages long while the law itself is around 6 pages of plain text.

At the same time, no reporting or other discrepancies may be associated with fiscal penalties:

- up to PLN 10 million in relation to the promoter entity,
- up to PLN 20 million in relation to persons responsible for such non-compliance.

Not reporting the scheme may also lead to penal liability.



WITHHOLDING TAX RULES

We are currently in a very particular situation regarding WHT in Poland. As of 1 January, 2019, Poland has new mechanism of collecting WHT, based on new rules:

- The entity paying out the receivables subject to WHT must verify with utmost diligence, whether the recipient of the payment has right to WHT rate or WHT exemption resulting from the relevant treaty or under the IR or PS Directive. If the paying entity fails to do so, it may face several penalties (even a penal one).
- Notwithstanding with the above, if the amount paid out to the beneficiary exceeds PLN 2,000,000 (approx. EUR 500 k), the paying entity is (as a rule) obliged to withhold the tax and pay it to the tax office. Please note that PLN 2,000,000 is the amount of payment, not the amount of tax.

If the value of receivables paid to one contractor does not exceed PLN 2,000,000 in a given year, the Polish entity collects tax on similar terms as before (i.e. can apply the WHT rate resulting from treaty of IR/PS Directive).

If the value of the payments exceeds PLN 2,000,000, the tax should be collected at the rate resulting from the Polish CIT or PIT Act (i.e. 19% or 20%). Depending on the business arrangements between the partners, the paying or receiving entity then has right to apply for a refund.

Please note that the Ministry of Finance has 'suspend' the provision mentioned above as regards the obligation to withheld the total amount of tax, firstly till the end of June 2019. On June it prolonged this 'suspension' until 31 December of this year.

CIT RATES

Starting from 2019, Poland has decided to change the CIT rates:

- 19% - standard tax rate,
- 9% - reduced tax rate for the small companies (i.e. whose income in a given tax year did not exceed the equivalent of EUR 1,200,000),
- 5% - from revenues under the IP box regime (revenues from so called qualified IP).

TRANSFER PRICING

Changes introduced as of 1 January 2019 in the field of transfer pricing are related to many aspects. The most important are:

- introducing the safe harbours for loans and low-value-added services,
- new materiality thresholds for TP documentation: PLN 2 million (approx. EUR 0,5 million) for intangible transactions and PLN 10 million (approx. EUR 2,5 million) for tangible one,
- new deadlines for preparing the TP documentation.



IP BOX - 5% INCOME TAX

Apart from R&D tax relief, the Polish taxpayers may benefit from 5% CIT or PIT rate on income derived from the so-called 'qualified IP rights' (which include, among others, patents and the IP rights to computer programmes).

The 5% rate may be applied to income calculated as the product of the aggregate income from qualifying intellectual property rights and the so-called Nexus ratio.

The Nexus ratio is determined as follows:

$$\frac{(a + b) * 1,3}{a + b + c + d}$$

The individual letters in this formula stand for costs actually incurred by the entrepreneur in respect of:

- a – R&D activity carried out directly by the taxpayer in connection with the right in question;
- b – acquisition of R&D results related to the right in question from an unrelated entity;
- c – acquisition of R&D results related to the right in question from a related entity;
- d – acquisition of a qualifying intellectual property right by the taxpayer

The Ministry of Finance has issued the official tax guidances how to apply the new rules.

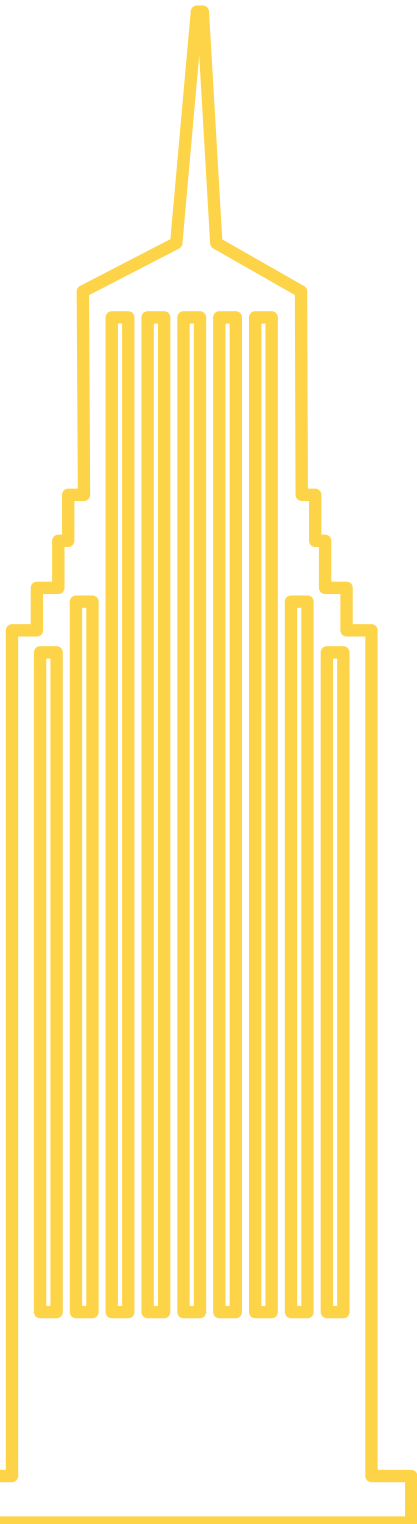
MINIMUM COMMERCIAL PROPERTY TAX

Starting from 2018, a new minimum tax on commercial property tax has been introduced. Starting from 1 January 2019, the tax has been significantly modified in order to cover more properties.

The new regulations assume the taxation of all buildings (residential and non-residential), which have been put into use (in whole or in part) under a rental, lease or another agreement of a similar nature.

The tax will not be subject to buildings for which the proportion of the usable floor area of the building put into use (i.e. rented or leased) does not exceed 5% in its total area.

In addition, as of 1 January 2019, the new manner of calculating the PLN 10,000,000 tax-free amount was introduced. The limit does not refer to a book value of specific building (as it was in 2018) but is calculated as a total value for all buildings owned by a given taxpayer



EXIT TAX

A new tax on profits from unrealised gains (the so-called exit tax) was introduced as of 1 January 2019.

The new tax covers several types of assets of the individuals changing tax residency, i.e.:

- rights and obligations in a partnership,
- shares in a company,
- stocks and other securities,
- derivatives and investment certificates,

The exit tax applies if the total market value of the transferred assets exceeds PLN 4 million. For spouses who are subject to joint conjugal property, the limit on the market value of the assets component applies jointly to both spouses.

In general, the taxable base for income from unrealised profits was defined as the surplus of the market value of an asset determined as at the date of its transfer or the day preceding the change in the tax residence above its tax base

The exit tax rates are:

- a) 19% tax base - when the tax value of an asset is determined;
- b) 3% of the tax base - when the tax value of an asset is not determined.



TAXATION OF CRYPTOCURRENCIES

Starting from 2019, all revenues from virtual currency trading (and other operations) should be classified as capital gained income taxed with a 19% income tax rate (for both CIT and PIT taxpayers). Only the cryptocurrency exchanges or intermediaries will be able to tax the crypto-related income as a business income.

The new rules also determine that crypto to crypto transaction are not subject to taxation, only the transactions against FIAT currency or barter agreements are subject to income tax.

The main disadvantage is that the income from crypto-transactions cannot be settled against any non-crypto-related deductible cost (even related to other capital gains). Therefore, in practice, organising e.g. an Initial Coin Offering in Poland may not be best option



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