

Limitation of the application of the new withholding tax regulations

Decree of the Ministry of Finance

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The Ministry of Finance published a decree temporarily deferring the application of certain provisions introducing the obligation to collect withholding tax for payments exceeding PLN 2m. The decree provisions also introduce a permanent exemption to collect withholding tax for certain payments.



What is suspended?

The decree suspends **until 30 June 2019 the obligation to withhold the tax for payments exceeding PLN 2m in a given tax year**. The suspension concerns both cross-border payments and domestic dividends.

In practice, the decree also suspends the requirement obliging the tax remitter's management board member(s) to file a written statement in order to benefit from a withholding tax exemption / lower tax rate at the moment when the payment is made. As a consequence, this suspension indirectly limits the management board's liability in case of a successful questioning by the tax authorities of the right to apply a withholding tax exemption / lower tax rate.

ATTENTION! In case of cross-border payments the right to benefit from the described exemptions is contingent upon Poland having a double taxation treaty with the taxpayer's country of residence which regulates the taxation of dividend, interest and royalty income and upon the existence of an agreement on the exchange of information between Poland and this country.

The suspension can be applied if the requirements for the application of a lower withholding tax rate (or withholding tax exemption) resulting from a relevant double taxation treaty or local provisions are met.



Provisions applicable starting from 2019

On the contrary, the decree **does not postpone the entering into force of the remaining amended withholding tax regulations**. This means that (starting from 1 January 2019) the tax remitter benefitting from an exemption / lower tax rate will still have to exercise due diligence and, in particular, **verify the taxpayer's status based on the amended beneficial owner definition – if stated by the applicable provisions**. At the same time, the new beneficial owner definition now includes the performance of an actual business activity by the taxpayer in his country of residence.



Permanent suspension of the mandatory collection of withholding tax according to the new regulations

Notwithstanding, the decree permanently abolishes the amended withholding tax obligations in case of fees exceeding 2m PLN paid to foreign recipients for the use of industrial equipment (including means of transport, trade or scientific equipment) as well as – with some exceptions – payments related to maritime and air transport.

Moreover, the new WHT regulation will be also not applicable in case of certain tax remitters / taxpayers, e.g. payments resulting from interest or discount on bonds issued by the Polish State Treasury / Bank Gospodarstwa Krajowego or payments resulting from interest or discount on state bonds made to central banks as well as other kinds of payments made to entities jointly established by Poland and another country or made to international organizations, of which Poland is a member.



What are the key conclusions for entrepreneurs?

The proposed suspension of the application of the new regulations is undoubtedly a step into the right direction which will allow taxpayers to analyze the new regulations more in detail and, therefore, to be better prepared, in particular in terms of developing a common approach with unrelated contracting parties and / or within the group.

Notwithstanding, the majority of the new regulations is merely suspended and some of the amendments, such as due diligence or new definitions like the beneficial ownership, will apply from the beginning of next year. This should especially influence the assessment of the adopted approach with respect to payments made during and after the “suspension” period.

Worth asking.



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