

Poland's Ministry of Finance publishes decree deferring certain provisions of its new withholding tax reform

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On 10 December 2018, Poland's Ministry of Finance published a draft decree providing for several provisions which limit or defer the application of selected amendments to the withholding tax (WHT) regime.¹

The key change proposed under the draft decree would be that obligation to collect WHT at the statutory rates of 19% or 20% would be deferred until the end of June 2019. However, the Polish tax remitter would be obliged to apply other new requirements such as the definition of the beneficial owner or the obligation to apply due diligence to determine whether the payment recipient is eligible to benefit from relief at source as of 1 January 2019. Additionally, it is expected that payments made during first six months of 2019 will account for the PLN2m threshold for the whole of 2019, when a tax remitter making payments after the deferral period expires determines whether and to what extent the threshold for 2019 was exceeded or not.

According to the Ministry of Finance the deferral should allow taxpayers to properly prepare for the new WHT regime. However, despite postponement, the tax authorities could verify whether new, more stringent requirements regarding WHT relief at source are complied with, including during the six-month deferral period.

In view of that, although the deferral might provide some more comfort in terms of timing, it is crucial that taxpayers and tax remitters making cross border payment analyze the impact of the new WHT regime on their tax position before the first payments become due in 2019.

Despite the key proposed change described above, the decree also provides for other amendments, which might be relevant for specific industries (below are only several examples):

- ▶ The obligation to collect WHT at statutory rates is excluded for:
 - Interest or discount on bonds issued i.a. by the State Treasury and offered on foreign markets, earned by nonresidents
 - Payments to international organizations of which Poland is a member
 - Payments to entities exempt from corporate income tax in Poland based on explicit indication of their names in tax treaties concluded by Poland

- ▶ Tax remitters (including custodians) should calculate the PLN2m threshold for a particular taxpayer separately for:
 - Payments arising under securities held on securities accounts/omnibus accounts
 - Other payments subject to WHT
- ▶ The obligation to collect WHT at statutory rates is deferred until 31 December 2019 for:
 - Payments for use or right to use industrial equipment, including means of transportation, commercial or scientific equipment
 - Certain payments to sea carriers, if certain conditions are met
 - Certain payments to air carriers, if certain conditions are met

The proposed effective date of the decree is 1 January 2019. We will monitor the developments in this area and issue a new Alert when the final decree is issued.

Endnote

1. See EY Global Tax Alert, [Poland's President signs 2019 tax reform including strict withholding tax regime](#), dated 19 November 2018.

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EYG no. 012454-18Gbl

1508-1600216 NY
ED None

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