



WHT changes in the Polish Deal

Get ready for the "pay and refund" mechanism and make your payments safely

essence



Facts

- ▶ In 2019, tax law governing withholding tax (WHT) was significantly amended, and a number of new far-reaching and imprecise requirements were imposed on entities (both Polish and foreign).
- ▶ As part of the work on the social and economic program of the Polish Deal, a proposal to amend the provisions in this area was presented, with the changes scheduled to come into force in 2022.
- ▶ According to the bill, the following changes are planned:
 - ▶ it will be clarified that relationships between entities are taken into account when assessing due diligence,
 - ▶ the "pay and refund" mechanism (i.e. the obligatory WHT payment at the standard 19/20% rate) will apply to payments to related entities in respect of interest, royalties and dividends (i.e. excluding payments for the so-called intangible services) if the annual payments to a given entity subject to the WHT regime reach PLN 2 million,
 - ▶ the applicability of the opinion on the application of the exemption will be extended for payments benefiting from preferential rules (a lower WHT rate or no WHT at all) under double taxation agreements.



Key challenges

- ▶ Do the remitter's procedures meet the due diligence requirement?
- ▶ Is the recipient of the payment its beneficial owner in line with the extended definition effective from 2019?
- ▶ How to safeguard Board members and financial managers from liability?
- ▶ How to prepare for the "pay and refund" mechanism?
- ▶ How to prepare for submitting a WHT refund application, a request for an opinion on the application of a waiver (preferential rules) or for filing the remitter's declaration?



Key risks

- ▶ New personal (criminal liability) and financial (additional tax liability) penalties for failure to comply with verification procedures.
- ▶ The remitter's liability for payments to a related entity is not excluded even if the remitter is not at fault for not collecting the tax in the proper amount.
- ▶ A negative impact on cash flows (lengthy refund procedure, the need to draw up a detailed application, risk of no tax refund).



How can we help you?

Preparation for the safe implementation of the "pay and refund" mechanism

A WHT review: Analysis of your individual payments and recommendations of specific actions with safety for companies and their Management secured. Setting out possible preparatory actions for the implementation of the selected action plan, i.e.:

<p>Certification of selected transactions</p> <p>Analysis of eligibility for the exemption or a reduced WHT rate, including the criterion of the beneficial owner of receivables (a new definition) and the genuine economic activity test.</p> <p>Certification of individual transactions for the purpose of the WHT exemption/ reduced rates to satisfy the statutory requirement to submit a Management declaration.</p>	<p>Requesting an opinion on the application of the exemption/ preferential treatment</p> <p>Preparation of a complete application and support at the filing stage and any further contacts with the tax office. With an opinion on the application of the exemption/ preferential treatment, the remitter will have the right not to withhold the tax also after the annual cap of PLN 2 million is exceeded, for up to 3 years.</p> <p>Our practice shows that the waiting time for an opinion is approx. 9 months. Therefore, it is important to plan your request for an opinion beforehand in order to secure the WHT treatment of your payments to be made in 2022.</p> <p>Preparation for the submission of a request on the application of preferential WHT treatment from 2022.</p>	<p>Preparation for a WHT refund</p> <p>Analysis of your eligibility for a WHT refund (e.g. formal conditions, identification of the applicant).</p> <p>Drawing up a complete application for a WHT refund and assistance in your contacts with the tax office.</p>
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Do you exercise due diligence?

<p>If you have not implemented any WHT procedure yet:</p> <p>Design of and assistance with the implementation of WHT procedures:</p> <ul style="list-style-type: none"> ▶ Development of the WHT reporting procedure, including the rules for identifying and classifying transactions subject to WHT and the rules for verifying the transaction status of counterparties for the purpose of claiming exemptions and reduced WHT rates. ▶ The procedure may provide a basis for proving due diligence. 	<p>If you have already implemented your WHT procedure:</p> <p>Your WHT policy certification:</p> <ul style="list-style-type: none"> ▶ Analysis of the WHT policy and procedures you have implemented, including a verification (form and content) of the rules of identifying and classifying transactions subject to WHT and the rules of verifying the transaction status of your contractors for the purpose of claiming exemptions and reduced tax rates. ▶ The Client receives a report certifying compliance of the Company's WHT policy with the new rules.
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Benefits of working with EY

With EY's comprehensive approach to WHT issues, you can:

- ▶ Increase/ secure your WHT efficiency.
- ▶ Safely manage the Company's risk and the risk of personal liability (criminal fiscal liability).
- ▶ Implement consistent and comprehensive mechanisms securing due diligence and enhancing the security of entities involved in the transaction.

Contact EY



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