

December 2019

Rules for collecting withholding tax (WHT) partly postponed until 30 June 2020

In recent days on the website of the Government Legislation Centre a draft decree of the Minister of Finance amending the decree on excluding or limiting the application of Article 26(2e) of the Corporate Income Tax Act and a draft decree of the Minister of Finance amending the decree on excluding or limiting the application of Article 41(12) of the Personal Income Tax Act have been published.

According to the draft decree, in case of CIT taxpayers the entry into force of new withholding tax (WHT) collection mechanism, planned initially on 1 January 2019, will be postponed until 30 June 2020.

Meanwhile, in case of PIT taxpayers, although the regulations on the new withholding tax collection mechanism have been in force for half a year, according to the draft decree their application will be suspended from 1 January 2020 to 30 June 2020.

What the decrees concern

In general, the decrees concern the new obligations imposed on withholding tax remitters by the act of 23 October 2018 (Journal of Laws item 2193).

According to these regulations, the Polish tax remitter paying out interest, dividends, royalties

or payments for certain intangible services to foreign taxpayers, is first obliged to collect WHT (at the rate 20 percent or 19 percent) and only after collecting it the foreign taxpayer (or the Polish tax remitter, if he bore the economic burden of tax) may apply for a refund of the collected WHT (pay and refund mechanism).

Regulations still in force

It should be emphasized that, as before, the postponement applies only to the mechanism of collection of withholding tax.

In force remain the regulations obliging tax remitters to exercise due diligence when verifying the conditions of applying an exemption, or the preferential WHT rate, and to verify the payment recipient as their beneficial owner in light of the new broader definition of this term (including the obligation to verify the fact of conducting actual business activity).

The effects of publication of the decrees

It should be also pointed out that according to the justifications to the draft decrees, the proposed postponement is caused by planned by the Ministry of Finance amendment of the regulations regarding withholding tax.

From the point of view of the taxpayers, they have gained additional time to prepare to the new regulations.

Other changes

Besides the postponement of entry into force of the new rules, in the draft decrees have been included also the regulations concerning the payments of interest and discount on bonds offered by the State Treasury and Bank Gospodarstwa Krajowego. No tax was levied on such payments so far only if they were offered on the foreign markets.

As of 1 January 2020 this exclusion will apply also to the bonds offered on the domestic market, without a time limit.

The Ministry of Finance justifies this preference by the intention to diversify the base of purchasers of treasury bonds and to improve the competitiveness of BGK bonds in comparison to the bonds offered by other issuers.

As it was stated in the justifications to the draft decrees: *"The State Treasury must be protected from the expectations of the investors that the bonds issued by the State Treasury should have higher interest rate in comparison to the market level, regarding the fact of "freezing" of funds by the investors until the tax is returned"*.

Contact us

If you would like to discuss the effects of the new decrees, please do not hesitate to contact KPMG.

KPMG Offices

Warszawa

ul. Inflancka 4a
00-189 Warszawa
Tel. : +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Gdańsk

al. Zwycięstwa 13a
80-219 Gdańsk
Tel. : +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków

ul. Opolska 114
31-323 Kraków
Tel. : +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Katowice

ul. Francuska 36
40-028 Katowice
Tel. : +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań

ul. Roosevelta 22
60-829 Poznań
Tel. : +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Łódź

ul. Składowa 35
90-127 Łódź
Tel. : +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Wrocław

ul. Szczytnicka 11
50-382 Wrocław
Tel. : +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl



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