

June 2020

New rules for collecting WHT postponed till 31 December 2020

On 24 June 2020 in the Journal of Laws were published the decrees of the Minister of Finance, amending:

- 1) the decree on excluding or limiting the application of Article 26(2e) of the Corporate Income Tax Act and
- 2) the decree on excluding or limiting the application of Article 41(12) of the Personal Income Tax Act.

Under the decrees, the entry into force of the new withholding tax (WHT) collection mechanism in CIT, initially planned for 1 January 2019, is postponed again, until 31 December 2020.

In fact, the entry into force of these provisions has already been postponed to 30 June 2019, 31 December 2019 and, most recently, to 30 June 2020.

With regard to PIT, although the regulations on the new withholding tax collection mechanism have already been in force for half a year, the new decree provides for their suspension from 1 January 2020 to 31 December 2020.

In accordance with the applicable rules, decrees enter into force on the day following their publication in the Journal of Laws, i.e. on 25 June 2020.

Goal of the decrees

Essentially, the decrees refer to the new obligations imposed on withholding tax remitters by the Act of 23 October 2018 amending the Personal Income Tax Act and the Corporate Income Tax Act (Journal of Laws, item 2193), according to which, Polish tax remitters paying out interest, dividends, royalties or payments for certain intangible services to foreign taxpayers are first obliged to collect WHT (at the standard rate of 20 percent or 19 percent) and only once it is collected, foreign taxpayers or the remitters themselves (if they bore the economic burden of tax) may apply for a refund of the collected WHT (under the pay and refund mechanism).

Regulations still in force

Note that the postponement applies only to the mechanism of collection of withholding tax.

The regulations obliging tax remitters to exercise due diligence when verifying the conditions of applying WHT exemption or lower WHT rate, and to qualify the recipients as their beneficial owners in line with a new broader definition of the term (including the obligation to verify whether they conduct actual business activity), still remain in force.

Possible developments with regard to new rules for collecting WHT

According to the explanatory notes to the decrees, the reason for the postponement of the new rules for collecting WHT is the prolonged state of the COVID-19 pandemic. Given the situation, it seems justified to limit the remitters' obligations related to the collection of withholding tax, as well as to ensure proper capacity of the tax administration.

Since it remains impossible to specify when the pandemic will be over and thus to ensure relevant support for business throughout this period, the idea was to postpone the date of entry into force until the end of 2020.

Earlier, the Ministry of Finance announced that work is underway on amendments to the regulations regarding new rules for collecting WHT, which may exclude certain categories of payments from the new rules or change some procedural requirements, in order to ease tax remitters to apply exemptions. However, the details of these amendments still remain unknown.

Please contact us for further information

If you would like to learn more about the issue discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

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