



Newsletter No 4 | 2021



## OUR NEWS

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### 1. Reduced CIT rate of 9%



Currently, the standard CIT rates are 19% and 9%. Nevertheless, some income is taxed at a flat rate of 5%, 10% or 20%, while in the case of companies paying 'Estonian CIT', the tax rates are 15% and 25%.

A preferential CIT rate of 9% applies only to income (revenue) other than capital income, which is always taxed at 19%.

To qualify for a reduced rate, taxpayers must meet two requirements:

1. be a small taxpayer or a taxpayer that has just started its business, and
2. have revenues of no more than EUR 2 million (which includes all revenues, including capital income).

The EUR limit is converted each year into PLN using the average EUR exchange rate announced by the National Bank of Poland on the first business day in October of the preceding tax year, rounded up to PLN 1,000. In 2021, the revenue threshold that qualifies taxpayers whose tax year is the calendar year for applying a CIT rate of 9% – is PLN 9,097,000.

A small taxpayer is a taxpayer whose sales revenue (including the amount of VAT due) in the previous tax year did not exceed EUR 2 million (expressed in PLN).

For currency conversions, the average EUR exchange rate used is announced by the National Bank of Poland on the first business day in October of the preceding tax year, rounded up to the nearest PLN 1,000. In 2020, this was PLN 9,031,000.

The other group of those eligible to apply the reduced CIT rate of 9% are businesses who start up a business, but only in their first year. The possibility to apply a preferential rate in subsequent years depends only on having small taxpayer status.

Another restriction, and an impediment to applying the 9% rate, is the manner in which the business was created. A reduced rate cannot be applied in the start year or in subsequent years specifically by:

- a company transformed from a partnership;
- a company or partnership transformed from a sole proprietorship to which an in-kind contribution was made in the form of: an enterprise that has been operated by the sole proprietor, an organised part of the enterprise or assets with a value exceeding at least EUR 10 thousand, converted from PLN using the average exchange rate announced by the National Bank of Poland on the first business day in October of the preceding tax year, rounded up to PLN 1,000 (in 2020, it was PLN 46,000).
- taxpayers who have undergone a specific restructuring process such as a demerger or an in-kind contribution made in the form of another business.

## 2. | National Register of Debtors

The National Register of Debtors (Krajowy Rejestr Zadłużonych, KRZ) has been a hot topic for quite some time, having been initially set out in the Act on the National Register of Debtors of 6 December 2018. This public database will now enter into force on 1 December 2021 – a year later than expected.

It is intended to be a reliable source of information about any entities (individuals and business entities) that are insolvent, are at risk of insolvency and those with respect to whom debt enforcement proceedings have proved unsuccessful and have been discontinued.

The register will disclose details of entities subject to restructuring or bankruptcy proceedings. It will also include information about the shareholders of companies as well as the partners of partnerships with unlimited personal liability for the debts of a partnership if it is declared bankrupt.

The public nature of the register means that anyone can access the registered information, making it easier for businesses to check whether their potential contractors have debts. However, not all the information will be made publicly available. Some information will be accessible only to applicants with a specific legal interest in a given matter. Entries in the register will be kept for 10 years, though there are cases when they can be removed after seven or even three years. In addition, a debtor may request that its entry be deleted if it has paid its debts.

The introduction of the National Register of Debtors results from the EU requirements. Under Regulation 2015/848 on insolvency proceedings, every EU Member State is required to maintain at least one register with information about insolvency proceedings. The need for such a register is due to the demands caused by the growing number of personal insolvencies. Initially, this role was to be assigned to the Central Register of Restructuring and Insolvency Cases, but the scope of that register was too narrow to address the current needs.

### **3. | Delay in the new withholding tax regulations**

The introduction of a new withholding tax (WHT) model for payments in excess of PLN 2 million has been postponed again.

Originally, the tax reform applicable to CIT payments in excess of PLN 2 million was to enter into force on 1 January 2019, but it has been postponed five times – currently until the end of 2021.

In accordance with the reform, which was intended to apply from 1 January 2019, for specific payments including dividends, interest, licences or remuneration for certain intangible services, a Polish taxpayer would be required to withhold tax at the domestic rate and subsequently, having proved that certain requirements have been met, it could apply for tax return.

Please remember that, starting from 1 January 2019, new regulations apply governing due care and diligence, along with an amended definition of an ultimate beneficial owner. These are material to the application of a reduced withholding tax, or the exemption or exclusion from the obligation to withhold tax.

Please note that, as of 1 January 2021, in any matters concerning a flat CIT rate withheld from non-residents by payers, the competent tax authority is the Head of the Lublin Tax Office in Lublin (Naczelnik Lubelskiego Urzędu Skarbowego w Lublinie).

This means that you have to submit to this tax office specifically CIT-10Z and IFT-2/IFT-2R declaration forms, as well as applications for an opinion on the exemption from WHT and other documents in this respect.

## 4. | Arbitration

Arbitration is a form of alternative dispute resolution (ADR). It is an efficient tool to avoid battling before a common court of law. It has grown in popularity in recent years, specifically among Polish businesses dealing with foreign contractors.

Despite being regulated by the regulations concerning civil law procedures, arbitration differs from litigation. The main difference is that the parties to arbitration may freely determine the course of the arbitration proceedings. The parties may decide on the dates and venue of hearings, the language used and may “choose the judge”. These possibilities give the parties more flexibility to suit their needs.

In addition, arbitrators usually have an appropriate degree of expertise on the subject matter of the dispute. This means that the arguments provided by the parties are better understood and decisions are more accurate for being based on the professional knowledge and abilities of the arbitrator.

Civil cases, and specifically commercial ones, are frequently able to be heard through arbitration. Arbitration is also used to resolve disputes between two businesses.

The decision to arbitrate a potential dispute may be made in an agreement, by including an arbitration clause. The parties may also decide to opt for arbitration after a dispute has arisen, by concluding an arbitration agreement.

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