

OUR NEWS

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1. Polski Ład and changes to WHT



Nowy Ład – the “Polish Deal”, which the Polish President signed on 16 November, introduces a range of novelties for taxation, including withholding tax. The new law will enter into force on 1 January 2022 and will involve specifically:

1. limiting the use of WHT refunds on passive income distributed to related parties,
2. re-defining the concept of beneficial owner,
3. allowing taxpayers to apply for opinions confirming they can benefit from a WHT exemption (after the changes: an opinion confirming the taxpayer can benefit from relief on WHT) if one is permitted under a double taxation treaty,
4. modifying the criteria for assessing due care,
5. extending the list of cases where a certificate of tax residence is required.

Re. 1 “Pay and refund” mechanism

The use of the WHT pay and refund mechanism will be narrowed down to payments made in a given tax year to related parties (as defined in the transfer pricing regulations) other than Polish tax residents, where the total amount of the payments does not exceed PLN 2 million. Therefore, this procedure will not apply to non-related parties.

In addition, the catalogue of payments under the pay and refund procedure will only apply to payments classified as passive, as defined in the CIT Act. This income includes specifically:

- interest,
- copyright and related rights,
- royalties,
- dividends and corporate profit distributions.

This procedure will not apply to payments for intangible services, such as: consulting, accounting, legal, advertising or market research.

From January 2022, declarations on exercising an exemption from the “WHT refund” procedure, which currently must be signed by all the members of the applicant’s management board, may be signed by a representative in the case of boards consisting of more than one person.

Re. 2 Definition of beneficial owner

According to the new definition, an assessment of whether a given entity actually performs economic activity must consider the nature and scale of the activity in the context of the payment obtained. The existence of economic substance will still need to be established, but with regard to differences in the nature and the scale of business conducted by different entities in the context of payments received.

Re. 3 Opinions on withholding tax relief

The current opinion confirming the taxpayer’s entitlement to benefit from an exemption from WHT will be replaced by an opinion on the taxpayer’s entitlement to benefit from WHT relief. On the basis of this opinion, a taxpayer may benefit from an exemption under Polish law as well as WHT relief under the relevant double taxation treaty.

Taxpayers and tax remitters, regardless of who bears the economic burden of the tax, may request such an opinion.

Transitional provisions extend the validity of opinions confirming the taxpayer’s entitlement to benefit from an exemption from WHT issued before the end of 2021 – such opinions will remain valid until 1 January 2025.

Re. 4 Due care

A new criterion was added to the current list of requirements concerning due care, used to evaluate the nature and scale of the tax remitter's business. This change involves an assessment of links defined in the transfer pricing regulations, and effectively tightens up the due care policy in respect of related parties.

Re. 5 Copies of certificates of tax residence

Copies of a certificate of tax residence may only be used in connection with payments for intangible services worth up to PLN 10,000, provided to the same recipient in a given calendar year. Exceptionally, during the COVID-19 pandemic, certificates have been accepted on a wider number of occasions.

From January 2022, tax residency certificates will be accepted in any situation where there are no doubts about their accuracy, reliability or veracity.

2. | ACT ON THE ELECTRONIC DELIVERY OF DOCUMENTS

The Act on the Electronic Delivery of Documents, which entered into force on 5 October 2021, is aimed at modernising, streamlining and standardising communication with the public authorities. At the moment, users need to have a number of accounts on various official sites in order to use the electronic services provided by public offices. Raising complaints about a lack of user friendliness, clunkiness and chaos in the systems, businesses have tended to give up on using remote means of communication with authorities.

Electronic delivery (e-delivery) is a universal public service provided by a qualified trust service provider providing qualified electronic registered delivery services (ERDS). This process complies with the eIDAS Regulation (such as qualified electronic signatures). A message sent from the address dedicated to e-deliveries has the same legal effect as a registered letter with return receipt.

E-delivery will be used in every administrative, court and civil procedure, ultimately becoming the default form of

communication between individuals and businesses with public authorities.

The first step to using the service will be setting-up an address for e-delivery and registering it in the official repository and directory of electronic addresses (Baza adresów elektronicznych, BAE). The BAE is a public register of addresses used in the electronic delivery process, maintained by the Ministry of Digital Affairs.

From the moment an email address is registered, then authorities will start sending correspondence by **electronic means only**.

Public entities and businesses are required to have an address for the electronic delivery of documents. Such an address must be registered:

- for businesses registered in the **National Court Register (KRS) before 5 July 2022** - from **1 October 2022**.
- for businesses registered in the **Central Registration and Information on Economic Activity (the CEIDG)** - from **1 October 2026**.

Importantly, users who have an address dedicated to e-delivery are required to collect electronic correspondence, but not to send correspondence electronically.

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