

# Newsletter

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# R&D Tax relief

Maria Kotaniec  
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Tax relief for research and development was introduced at the beginning of 2016. Since 2018, it has been specifically advantageous to businesses being CIT and PIT payers. Starting from January 2022, taxpayers may combine two measures, i.e. R&D relief and IP box, which has never been possible before.

## Who can apply for R&D tax relief?

Contrary to common belief, R&D relief may be used by almost every business, no matter what the industry is, since research and development activity should be understood as working on new products and enhancements to existing processes or products. There is no need to cooperate with research and development institutes or engage any research units.

To claim such relief, a business needs to undertake research and development activities, regardless of the result. The level of innovation may depend on a given business – it will suffice to introduce changes or improvements to a product or service.

R&D relief entitles eligible taxpayers to deduct from the taxable base qualifying expenditure on R&D that has been already classified as deductible as a revenue expense of the trade for tax purposes.

## What should I do to be eligible for R&D relief?

To claim relief a taxpayer needs to:

- carry out R&D activities;
- indicate projects involving R&D activities; and
- attribute qualifying expenditure incurred on those R&D activities to a specific form of tax relief.

## What qualifies for R&D relief?

Qualifying expenditure include specifically:

- staffing costs proportional to the time dedicated to R&D undertaken by the company;
- the purchase of materials and raw materials directly related to R&D activity;
- depreciation write-offs made in the tax year on fixed assets and intangible assets used in the conducted R&D activity;
- the costs of obtaining and maintaining a patent, protection right for a utility model, rights from registering an industrial design; and
- the purchase of services consisting in the use of scientific and research equipment.

R&D relief cannot be claimed for the costs of depreciation of passenger cars as well as buildings, structures and premises.

Taking advantage of R&D relief requires additional administrative work, including: separate accounts for the purposes of R&D relief, obtaining a tax ruling to guarantee the tax safety of the business, introducing time tracking (timesheet) for employees and contractors to document the time actually spent for R&D activities.

All of those efforts will undoubtedly pay off, since tax benefits are very attractive and are worth it. Please also note that you can claim R&D relief up to five years back, therefore you may correct your tax declarations from the past years to generate more savings.

*Maria Kotaniec  
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## Minimum corporate income tax

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Since 2022, a minimum corporate income tax has been in force, i.e. a corporation tax.

### What is the corporation tax and who does it apply to?

This is a brand new type of tax liability for corporate taxpayers applying to:

- taxpayers with their registered office or management board in Poland that are subject to Polish income tax on their worldwide income, regardless of where it is earned;
- tax capital groups;
- taxpayers operating in Poland through a Poland-based foreign establishment, i.e. taxpayers who do not have their registered office or management board in Poland and are subject to Polish income tax only on income earned in Poland.

The minimum corporate income tax is imposed on taxpayers that:

- reported a loss from a source of income other than capital gains; or
- reported no more than 1 per cent of income coming from a source of income other than capital gains.

### What does this mean?

Taxpayers that report a loss from a source of income other than capital gains, or that have a low share of income from a source other than capital gains in their total income will pay the minimum CIT.

The calculation of a loss for the purposes of corporation tax does not mean only the identification of a loss in the accounts. When calculating a loss and a share of income in the total income, the taxpayer should not include:

- expenses on purchase of fixed assets; and
- income and deductible expenses that are directly or indirectly connected with the income earned or incurred in connection with a given transaction.

### Who is not subject to corporation tax?

There are several exceptions. The corporation tax does not apply, specifically, to:

- taxpayers that commenced business during the tax year – in the year of commencing business and for two subsequent tax years. This exception does not apply to taxpayers formed as a result of transformations, mergers or divisions, by the contribution of an enterprise, an organised part of an enterprise or specific assets.
- financial undertakings, meaning credit institutions, banks, companies such as credit unions (SKOK), insurance companies or investment firms;
- taxpayers who reported revenues at least 30 per cent lower in a given tax year in comparison with revenues reported in the previous tax year;
- taxpayers whose shareholders are only natural persons;
- Taxpayers who are members of a group of at least two companies, where one of the companies directly holds a 75 per cent interest in the other members of the group throughout the entire tax year, where all the companies have the same tax year, and where the share of the total income earned by these companies in their total revenues calculated for the tax year is more than 1 per cent.

In addition, in the case of taxpayers who commenced their business in the tax year, the corporation tax applies only to Polish tax residents. The same applies to financial undertakings.





### What are the main categories of the tax base?

The minimum rate of income tax is 10 per cent on the tax base, which consists of four main categories:

- revenues other than capital gains;
- debt financing to related parties; and
- deferred income tax resulting from the disclosure of non-amortized intangible assets;
- some costs of intangible services.

The tax base of the corporation tax is the sum of specific revenues, debt financing costs, deferred income tax and other expenses including advisory, advertising, insurance and other services. The calculation of the tax base and the tax is not simple and may cause many problems.

In view of the above, and given the fact that the initial assumptions underlying the introduction of the minimum tax have not been met, the government is now considering suspending the minimum CIT and it is likely that, among the provisions in a new amendment to the Act Governing the Rules of CIT Settlements (which is due shortly), the removal of the provisions introducing the corporation tax will be proposed.

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Tax advisor





## Whistleblowing – the history of the Whistleblower Directive

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A whistleblower must sometimes make difficult decisions before reporting a breach of law that may significantly affect his or her situation.

Therefore, in order to protect whistleblowers, the directive of 23 October 2019, commonly known as the Whistleblower Directive, has been introduced. Nevertheless, the Whistleblower Directive does not cover all the aspects regarding the protection of whistleblowers, leaving a certain degree of discretion to national governments.

Poland has not yet implemented the Whistleblower Directive and, as legislative work on the bill is currently underway, it is difficult to predict the final form of the Whistleblowers Act. However, it is worth mentioning that a new bill was presented on 6 April 2022, introducing several developments compared to the previous bill of 14 October 2021.

### What are the changes introduced to the new bill?

The changes introduced in the new bill include specifically:

- Every legal entity with 50 or more workers will have to establish an internal whistleblowing procedure.
- The creation of an internal whistleblowing procedure. In the previous bill, an internal reporting procedure was to be established by the employer;
- The internal whistleblowing procedure must be presented to each worker at the recruitment stage or during negotiations preceding the execution of the contract;
- It will be no longer possible to make anonymous reports. Previously, it was possible for employees to determine a procedure for anonymous reports;
- Certain regulations have been introduced for processing personal data;
- Some statutory definitions have been modified, including, for example, “work-related context”.

### What effect do the changes to the bill have?

The changes introduced to the new bill substantially affect its scope of application, i.e. from the entity that has to introduce the internal whistleblowing procedure (it is not only an employer who employs more than 50 people based on an employment contract) to its application in practice.

An example is the removal of the option to accept anonymous reports. In the previous bill, the employer could decide whether it will accept and follow up on anonymous reports of breaches from a John Doe.

This is not possible in the new bill, which means that Poland, pursuant to Recital 34 of the Whistleblower Directive, has decided not to accept anonymous reports. The grounds of the new bill presents practical and functional arguments concerning the possibility of contacting anonymous whistleblowers and preventing potential unfounded reports.

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## Does every shareholder have the right to inspect the company's accounts and documents?

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When joining a company, a new shareholder should know what rights they have with respect to the company. In addition to obvious issues such as the right to participate at shareholders' meetings, a shareholder has the right, under Article 212 of the Commercial Companies Code, to inspect the company. This article states that all shareholders, no matter how many shares they hold, have the right to inspect the company. This right may be exercised by inspecting the accounts and documents of the company, drawing up a balance sheet and requesting explanations from the management board.

In addition, while carrying out its inspection, the shareholder may be accompanied by an authorized person, such as a lawyer or accountant, though the shareholder must always be present in person while carrying out the inspection.

Accounts and documents mean financial statements, balance sheets, profit and loss accounts, court and registry files, contracts executed by the company and other documents connected with the day-to-day operations of the company.

### **When can a shareholder exercise the right to carry out an inspection?**

A shareholder may exercise its right of inspection at any time, within reason. This means that a shareholder should respect the office hours and not interfere with business activities. It is good practice to schedule such inspections sufficiently in advance to allow the management board can prepare the necessary documents.

### **Can a shareholder be denied the right to carry out an inspection?**

Under Article 212 § 2 of the Commercial Companies Code, the management board may refuse to give a shareholder explanations or to provide the accounts and documents of the company for

inspection in the event that there is reasonable concern that the shareholder will use them for purposes contrary to the company's interest, thereby causing substantial damage to the company.

In this case, the management board should adopt a relevant resolution in which it sets out the circumstances that indicate the perceived threat. Such circumstances must be specific and precise. The management board is required to present details of any possible risk resulting from the provision of such information to the shareholder and to demonstrate a causal link with the possible damage to the company.

### **What happens if a shareholder is refused the right to carry out an inspection by the management board?**

In this case, the shareholder may request that the issue be settled by the remaining shareholders and may demand the adoption of a relevant resolution in this respect. The resolution should be adopted within one month from the date on which the demand was submitted. The shareholder who has been refused the right to inspect the company's accounts and documents may appeal to the remaining shareholders through the management board. The shareholders may settle this issue without convening a meeting of shareholders, for example by adopting a resolution in writing.

If the remaining shareholders share the concerns of the management board and refuse access to the company's information, or if the deadline of one month to adopt the specific resolution passes, then the shareholder who wished to exercise the right of inspection may have this issue finally settled by the court. The shareholder may bring court action within seven days from receiving notice about the resolution of shareholders, or seven days after the date on which the deadline passed for the adoption of the resolution. It is important that the shareholder, before turning to the court, must follow the entire internal corporate procedure or the action will be rejected as inadmissible.

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# → Law and taxes in Poland



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