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Newsletter

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TAX NEUTRALITY OF SIMPLIFIED MERGERS BETWEEN SUBSIDIARIES – AN END TO DISPUTES?

Article 515[1] of the Polish Commercial Companies Code of 15 September 2000 (consolidated text: Journal of Laws of 2024, item 18, as amended; the "CCC") was introduced into Polish law on 15 September 2024 as part of the implementation of Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

The provision introduced a new type of merger in which no shares in the acquiring company are issued. The absence of the "merger issue" is justified by the fact that the merging companies have identical shareholders and identical proportions of capital participation.

At first glance, this form of merger should also be tax-neutral for the acquiring company. However, its attractiveness has been diminished by individual tax rulings issued by the Head of the National Revenue Administration (Dyrektor KIS) as well as by certain administrative court judgments.

While the Head of the National Revenue Administration confirmed the tax neutrality of mergers between a parent company and its subsidiary – on the grounds that Article 12(1)(8d) of the Corporate Income Tax Act of 15 February 1992 (consolidated text: Journal of Laws of 2025, item 278, as amended; the "CIT Act") does not apply to such mergers (see the individual ruling of 16 October 2024, ref. 0111-KDIB1-1.4010.456.2024.2.AND) – he questioned the neutrality of mergers between sister companies. According to the Head, such mergers result in taxable income for the acquiring company under Article 12(1)(8d) of the CIT Act.

Even more unfavourably, the taxable income on the part of the acquiring company was deemed to be the market value of the assets of the acquired company on the day preceding the merger, with the entire amount treated as the surplus referred to in Article 12(1)(8d) of the CIT Act (see the individual ruling of 14 August 2024, ref. 0114-KDIP2-1.4010.192.2024.5.JF).

Discrepancies have been observed in the case law of administrative courts. The District Administrative Court in Krakow, in its judgment of 11 March 2025 (case No I SA/Kr 974/24), ruled in favour of the claimant in a dispute with the Head of the National Revenue Administration, holding unequivocally that Article 12(1)(8d) of the CIT Act does not apply to a merger without an issue of shares (i.e. a simplified merger procedure). Consequently, no taxable income arises on the part of the acquiring company. Notably, the case concerned a horizontal merger, i.e. between sister companies. Similar conclusions were reached by the District Administrative Court in Warsaw in its judgments of 10 July 2024 (case No III SA/Wa 947/24) and 3 October 2024 (case No III SA/Wa 1425/24).

Conversely, the District Administrative Court in Wroclaw, in its judgment of 25 June 2024 (case No I SA/WR 104/24), took a different position, finding that where no shares are issued, the entire value of the acquired company's assets constitutes taxable income for the acquiring company.
After nearly two years since the introduction of Article 515[1] into the CCC, the legislature has decided to step in. In the Act Amending the Energy Law and Certain Other Acts, adopted on 5 August 2025, Article 12(1)(8d) of the CIT Act was amended to explicitly state that income under this provision does not arise in the case of mergers carried out under Article 515[1] of the CCC.

This amendment appears to have put an end to the ongoing disputes and inconsistencies regarding the tax neutrality of horizontal mergers conducted under the simplified, no-issue procedure. The act was signed by the President of the Republic of Poland on 27 August 2025, meaning it will enter into force within the next few weeks.

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PAY TRANSPARENCY – UPCOMING AMENDMENTS TO THE POLISH LABOUR CODE

The issue of pay transparency has long sparked debate among both employers and employees. Polish law has, so far, not required employers to disclose remuneration levels during the recruitment process, nor has it specified whether employers may ask candidates about their previous earnings.

This situation will soon change, following the implementation of the EU Pay Transparency Directive, which entered into force in 2023. Member States, including Poland, have until June 2026 to align their national legislation with the Directive's requirements. In Poland, part of the implementing legislation has already been adopted and will enter into force on 24 December 2025.

The amendment to the Labour Code will introduce two key provisions – a new Article 18^{3ca} and an amended Article 22^{1}, both of which will affect the recruitment process.

Pay Transparency in Recruitment

The new Article 18^{3ca} of the Labour Code will require employers to disclose information about remuneration already at the recruitment stage.

The scope of the information obligation includes:

- an indication of the initial amount of remuneration, or the salary range,
- confirmation that the remuneration is determined on the basis of objective and gender-neutral criteria,
- information about any applicable collective bargaining agreements or remuneration regulations in force at the employer's organisation.

Form and timing of disclosure:

- information on remuneration must be provided in advance, in written or electronic form,
- it may be included in the job advertisement,
- if not disclosed in the advertisement, it must be provided before the interview,
- in the case of recruitment without a public advertisement, or if the information has not yet been provided, it must be disclosed before the employment contract is signed.

Ban on Questions About Previous Earnings

The amendment to Article 22^{1} of the Labour Code will restrict the scope of personal data that an employer may request from a candidate.
During the recruitment process, employers will no longer be permitted to ask about a candidate's current or past remuneration — regardless of whether the candidate is currently employed or not. The aim of this provision is to reduce pay discrimination and ensure equal negotiating opportunities for all candidates.

Purpose of these Changes and Next Steps

The amendment supports the implementation of the EU's strategy for achieving pay equality between women and men, enhances transparency in the recruitment process and strengthens the candidates' bargaining position.
It should be noted, however, that this is only the first stage of implementing the Pay Transparency Directive. Further changes are expected in the coming years, including obligations related to pay gap reporting and informing employees about remuneration structures. The Polish legislature is currently working on draft regulations addressing these issues and we will keep you informed.

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COVERING A LIMITED LIABILITY COMPANY'S BALANCE SHEET LOSS THROUGH SHAREHOLDERS' ADDITIONAL CONTRIBUTIONS AND LOANS

A negative financial result in a limited liability company (spółka z ograniczoną odpowiedzialnością, sp. z o.o.) is a clear warning signal. It requires both the management board and the shareholders to analyse the causes and make deliberate decisions aimed at stabilising the company's financial situation. Although losses may be settled against future profits, in practice it is often necessary to strengthen liquidity more rapidly.

The most commonly used instruments for this purpose are additional contributions (dopłaty) and shareholder loans. Both mechanisms consist of injecting additional funds into the company, yet their legal, accounting and tax consequences differ significantly. The choice between them is a strategic one — it affects not only the company's current condition, but also internal relations and future growth prospects.

Additional Contributions – Internal Capital Reinforcement

Additional contributions are a form of financing regulated by the Commercial Companies Code, enabling shareholders to recapitalise their company. They constitute an important tool for supporting liquidity, but their use is subject to specific legal and formal requirements.

- Requirement of the articles of association – the possibility of imposing additional contributions must be expressly provided for in the company's articles of association. Without such a provision, shareholders cannot rely on this instrument.
- Refundable in principle – as a rule, additional contributions are refundable. This means that, once the company's financial situation stabilises, they may be returned to shareholders, and their payment does not constitute taxable income for the company.

Shareholders' resolution – additional contributions are imposed and refunded through a resolution specifying the amount and timing. This resolution is a key procedural element ensuring transparency throughout the process.

Shareholder Loan – Flexible Liquidity Support

An alternative to additional contributions is a loan granted to the company by a shareholder. In such a scenario, the shareholder acts as an external creditor and the financial relationship is governed by the provisions of the Civil Code.

- Always repayable – a loan always constitutes a liability of the company towards the shareholder. Regardless of its purpose, it must be repaid under the terms set out in the loan agreement.
- Written agreement and transfer tax – in order to be valid, a loan agreement must be concluded in writing. As a rule, the transaction is subject to transfer tax (tax on civil law transactions, PCC — the term transfer tax is a direct translation of the Polish concept), though certain statutory exemptions may apply.
- Balance sheet implications – a loan increases the company's current assets through an inflow of cash, but simultaneously creates a liability on the liabilities side of the balance sheet. It therefore does not cover a loss in the accounting sense, but provides short-term liquidity and time to rebuild profitability.

Summary – A Strategic Decision

The choice between additional contributions and a shareholder loan goes beyond the company's immediate financial needs. It forms part of a broader strategy for managing stability and long-term development.
Additional contributions serve as a form of lasting capital reinforcement — they improve balance sheet ratios and enhance credibility in the eyes of banks or investors, though they also require shareholders to commit real, often non-refundable funds.
Shareholder loans provide the company with quick access to liquidity and remain a more flexible solution, though they increase indebtedness and do not actually cover the loss in accounting terms.
The final choice of instrument should result from a conscious analysis of both the company's financial situation and the long-term interests of its shareholders. This is where legal, accounting and business considerations intersect, making the decision a key element of responsible management in a limited liability company.

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ENFORCEABILITY OF FOREIGN COURT JUDGMENTS IN POLAND

The enforceability of foreign court judgments in Poland is a crucial aspect of cross-border disputes. It enables a creditor to submit a foreign judgment to a Polish enforcement authority in order to recover claims awarded abroad. The procedure, however, varies depending on whether the judgment originates from an EU Member State or a third country.

Enforceability of Judgments from EU Member States

The enforceability of judgments issued by courts of EU Member States is primarily governed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (commonly referred to as Brussels I bis). The regulation establishes the principle of the free movement of judgments, under which a judgment delivered in one Member State is, as a rule, directly enforceable in another Member State without the need for a separate procedure to declare its enforceability.

This principle is also reflected in Polish civil procedure. Pursuant to Article 1153(14) of the Polish Code of Civil Procedure, judgments of courts of EU Member States, as well as settlements and official documents originating from those states and falling within the scope of the regulation, constitute enforceable titles in Poland, provided that they are enforceable in the state of origin. Consequently, this category of judgments is exempt from the requirement to obtain a declaration of enforceability.

In practice, this means that a judgment rendered in Italy, for example, is enforceable in Poland as if it had been issued by a Polish court.

The creditor may, therefore, immediately submit an enforcement application to a bailiff (komornik), providing two essential documents: (1) an authenticated copy of the judgment and (2) a certificate confirming its enforceability in the Member State of origin. The certificate is issued on a standard form containing information on the amount awarded to the creditor, the recoverable costs and interest.

Although Polish law does not impose an obligation to submit translations of these documents, in practice creditors usually attach sworn translations to the enforcement application in order to pre-empt a possible request from the debtor and to avoid unnecessary delays in the proceedings.

The debtor may, however, apply to a Polish court for a refusal of enforcement of an EU judgment. The court will examine whether any of the grounds for refusal set out under EU law have been met. The creditor is also a party to this procedure and has the right to present arguments in support of enforcement.

Enforceability of Judgments from Third Countries

The procedure for declaring the enforceability of judgments issued by courts of non-EU countries is more complex. It is governed by the provisions of the Polish Code of Civil Procedure (Articles 1150–1153) and, in some cases, by bilateral international treaties concluded between Poland and specific states – for example, the Agreement between the Republic of Poland and Ukraine on legal assistance and legal relations in civil and criminal matters, signed in Kyiv on 24 May 1993.

A creditor seeking to enforce a judgment from a third country in Poland must first apply to a Polish court for a declaration of enforceability (exequatur).

The application must be accompanied by:

- an official copy of the judgment;
- a document confirming that the judgment is enforceable, unless enforceability follows directly from the judgment or the law of that state;
- a document confirming that the statement of claim was duly served on the debtor, if the debtor did not take part in the foreign proceedings; and
- certified translations of the above documents.

Thus, unlike judgments from EU Member States, judgments from third countries require judicial proceedings before a Polish court. Only after the court declares the judgment enforceable may the creditor submit an enforcement application to a bailiff.

Application for Security in Connection with the Enforcement of Third-Country Judgments

The process of declaring the enforceability of third-country judgments is more formalised and time-consuming. This is due not only to the requirement that the creditor file a separate application for a declaration of enforceability, but also to the fact that the debtor participates in the proceedings and may contribute to delays.

Under Polish civil procedure, the debtor has two weeks from the date of receiving the application in which to file a response. Consequently, once notified, the debtor becomes aware of the impending enforcement and may attempt to dispose of the relevant assets before the Polish court grants an enforcement clause.

To ensure the effectiveness of future enforcement, it is therefore advisable to submit, together with an application for a declaration of enforceability, an application for interim measures (an injunction). Such measures may include prohibiting the debtor from disposing of real or movable property, freezing bank accounts, or imposing similar restrictions.

Naturally, the application must be duly justified: the creditor must demonstrate a genuine risk that the debtor may conceal or dispose of assets, thereby hindering or preventing enforcement. Obtaining such protection allows the creditor to minimise the risk of ineffective enforcement proceedings.

Taking Evidence in Proceedings Concerning Declarations of Enforceability

It is worth noting that, in proceedings concerning the declaration of enforceability of a third-country judgment, Polish courts generally do not examine the merits of the case. Its role is limited to verifying whether the formal requirements for granting enforceability have been satisfied.

In practice, this means that the court will not re-hear witnesses or re-evaluate evidence. Instead, it will merely determine whether there are any obstacles to recognition and enforcement – for example, whether the debtor's right to a fair hearing was respected, whether the foreign judgment is final and binding, and whether its enforcement would be contrary to Polish public policy.

This limited scope of review is intended to facilitate international legal transactions and to enable creditors to seek enforcement in Poland on the basis of foreign judgments.

Enforcement Proceedings

Thus, the enforcement of judgments issued by foreign courts is possible in Poland. Depending on the country of origin, initiating enforcement may require the creditor to take additional steps to obtain a declaration of enforceability. Before commencing any enforcement actions in Poland, it is also advisable to verify whether the debtor possesses assets within the country and whether there is a risk of their concealment or disposal.
Once the enforcement application has been filed with a bailiff, the proceedings are conducted in accordance with Polish law. The bailiff is authorised to take all legally permissible measures to identify, seize and sell the debtor's assets, recover the amounts awarded under the foreign judgment, and transfer the recovered funds to the creditor.

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DO YOU HAVE ANY QUESTIONS?

WE LOOK FORWARD TO RECEIVING A CALL OR A MESSAGE FROM YOU

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