

The Ministry of Finance explains how to use the expansion relief

I. Tax explanations regarding the expansion relief will be issued

The Ministry of Finance is closing tax consultations on the draft tax explanations regarding the expansion relief. The subject of consultations are Article 18eb of the Act on CIT and Article 26gb of the Act on PIT regarding the tax preference in force from 1 January 2022, known as the expansion relief or pro-growth relief. The practical dimension of the proposed tax preference is the possibility for taxpayers to deduct twice certain categories of expenses which, according to the legislator's intention, indicate the expansive nature of the taxpayer's activity. It should be noted that the regulations on the relief for expansion contain a reservation regarding the type of revenue obtained. Namely, the discussed relief refers – in the scope of PIT – to “taxpayers earning revenues on non-agricultural business activity” – and in the scope of CIT – to “taxpayers earning revenues other capital gains”.

II. A wide range of CIT and PIT taxpayers can benefit from the relief

The expansion relief is available to both corporate income tax (CIT) taxpayers and personal income tax (PIT) taxpayers conducting business activity. In the case of CIT, these are: legal entities; capital companies in organisation; limited joint-stock partnerships; limited partnerships; general partnerships that are CIT taxpayers; organisational units without legal personality, except companies without legal personality; tax capital groups; companies without legal personality, with their registered office or management board in another country, if, in accordance with the tax law of that country, they are treated as legal persons and are subject to taxation in that country on all their income, regardless of where it is earned. In the case of PIT taxation, the entities entitled to apply for the relief are: natural persons conducting non-agricultural business activities; inherited enterprises; partners of a civil partnership; partners of a general partnership (if such a partnership is not subject to corporate income tax); partners of a professional partnership. However, the taxpayers of flat-rate tax on recorded income cannot benefit from the relief.

An entrepreneur will not benefit from the expansion relief for products that it did not produce itself, e.g. those that consist of ready-made components that the entrepreneur only combined into a finished product. If a company increases the total amount of revenues in the period required for the expansion relief and does not increase revenues on the sales of products the expenses deducted under the expansion relief concerned, it loses the right to preferences - these are just some of the interpretations included in the ministerial explanations for the relief.



III. The product must be manufactured in the taxpayer's enterprise

A necessary condition for applying the expansion relief is that the taxpayer incurs tax-deductible expenses in order to increase revenues on the sales of products. Products are items manufactured by the taxpayer. According to the Ministry of Finance, the starting point when interpreting the condition for producing an item should be the understanding of this concept established in the common language. Therefore, only an item, i.e. a material object of nature, the production of which took place within the taxpayer's enterprise can be defined as a product manufactured by the taxpayer. Products manufactured by a taxpayer within the meaning of the regulations on the expansion relief are tangible objects (things) created as a result of the use of means of production owned by the taxpayer, the formation process of which has been finalised, as a result of which these products have been included in the offer and may be intended for sale. This means that the relief is not available to entrepreneurs who resell previously purchased commercial items under their own brand. Moreover, taxpayers who produce specific goods as part of their business, but who do so on behalf of another entity and the production follows a pattern specified by the client are deprived of the right to the relief.

IV. Entrusting production to contractors deprives of the right to relief

According to the Ministry of Finance, applying the benefit is not possible for producers who base their production process mainly on the services of subcontractors or solely on combining the supplied component parts into one product, which places this type of entrepreneurs outside the scope of application of the relief. However, this does not exclude the possibility of benefiting from the relief by taxpayers who use purchased raw materials or components in the production process, which are then processed to obtain the final product. Therefore, according to the Ministry, the relief may be granted, for example, to entrepreneurs producing ceramics or jewellery who use raw materials provided by their contractors in the production process. However, a manufacturer of electronic equipment is deprived of such a possibility if the product included in the manufacturer's offer was created only as a result of combining externally supplied components. Similarly, a manufacturer operating in this industry will not be entitled to benefit from the relief in relation to products whose production process took place essentially outside the taxpayer's enterprise due to entrusting individual stages of production to its contractors.

V. Only revenues related to eligible costs can be taken into consideration when determining an increase in revenues

The possibility of applying the relief for expansion arises if the taxpayer, in the period of two consecutive fiscal years, counting from the fiscal year of incurring costs that can be deducted under the relief: increases revenues on the sales of products in relation to the revenues on this account determined on the last day of the fiscal year preceding the year of incurring these costs; will generate revenues on the sales of products not yet offered; will generate revenues on the sales of products not yet offered in the given country. However, as the Ministry of Finance points out, the conditions mentioned have been defined alternatively, i.e. the taxpayer will be entitled to benefit from the expansion relief if any of them is met. The condition of revenue growth may be considered met if the taxpayer achieves in any of the two fiscal years a higher amount of revenues than that determined at the end of the fiscal year preceding the year in which eligible costs were incurred, and the revenue growth condition should be related to any of the two fiscal years based on which the revenue growth criterion is to be examined. The Ministry also claims that for the purposes of examining the on the sales of products unrelated to eligible costs should be ignored. For the purposes of examining fulfilment of the revenue growth criterion, transactions with related entities must be disregarded as well.





RAFAŁ KOWALSKI
Head of Tax Department
tel.: +48 22 543 16 00
Rafal.Kowalski@bdo.pl

VI. Changes or improvements do not create a new product

The key element of the identified relief conditions is the concept of a “product not yet offered”. This requirement should be understood as the need to introduce a tangible good into the company's offer that would differ from the product range offered to an extent that would allow to consider the entrepreneur as expanding its activities into a new market segment. We will, therefore, be dealing with a product that has not been offered before when the scale of changes or improvements in relation to the products previously offered by the taxpayer justifies the belief that we are dealing with a new product in terms of its type. In consequence, any changes or improvements, including development of new technologies involved in the production process, which do not result in the creation of a new type of product (significantly different in terms of technical specifications compared to the entrepreneur's current offer) should be classified only as innovations within the previously manufactured product. Therefore, a taxpayer who introduces only minor modifications to previously manufactured products cannot benefit from the relief. The Ministry of Finance explains that as a result of these regulations, products not yet offered will include, for example, subsequent models of laptops or computer equipment with different components.

VII. Eligible employee costs are strictly defined

The catalogue of eligible costs specifies the types of costs that can be deducted again in connection with actions taken by the taxpayer aimed at expanding sales markets. The calculation includes two categories of costs related to employee involvement in marketing activities. In the light of the regulations concerning the analysed preference, expenses for the purchase of airline tickets for employees and the costs of accommodation and meals for employees, which were classified as costs of participation in fairs, may be deducted for tax settlement purposes again. However, the scope of the relief for expansion does not cover the remuneration costs of employees engaged in activities generating eligible costs. The scope of the expansion relief also does not cover the costs of purchasing airline tickets and accommodation and meals if these costs concern persons acting for the enterprise on the basis of an order, agency contract or any other service contract to which the provisions of the Civil Code regarding orders, contracts of mandate or managerial staff performing their duties on the basis of appointment apply.

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BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl

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