

To be introduced: minimum CIT for business operators who generate losses

I. The government wants to introduce minimum CIT for companies that do not pay tax

The act on tax changes constituting the Polish Deal, amended after consultations, provides for introduction of a new tax from 2022 on. The minimum corporate income tax will apply to companies being tax residents (i.e. having their registered office or management in the territory of the Republic of Poland and being subject to taxation on their total income, regardless of the place of its generation), as well as tax capital groups (which may be formed only by limited liability companies or joint stock companies with their registered office in the territory of the Republic of Poland), which in a given tax year generated a loss on operations or an income too low to trigger the tax obligation. The part of the amendment that concerns the new tax also provides for renouncement of limitation of the amount of tax costs incurred by a taxpayer for purchase of specific services or intangible rights. The amendment providing for these changes has already been approved by the government and sent to the Parliament.

II. Exclusion from tax costs for intangible services will disappear from the regulations

The draft assumes abandonment of continued functioning within the provisions of the CIT Act of Article 15e 15e that limits (reduces) the amount of tax deductible costs incurred by a taxpayer for acquisition of certain intangible services or rights. The limitation was introduced in 2018. It is a limitation of the amount of tax deductible costs incurred by a taxpayer for acquisition of certain services or intangible rights. Namely, if a taxpayer incurs costs for the benefit of related parties (entities from a country or territory applying harmful tax competition) on account of acquisition (use) of services (rights or assets) specified in the regulations, such taxpayer is obliged to exclude from tax costs the part of such costs which in the tax year jointly exceed 5% of the surplus of the sum of revenues from all sources of revenues less interest revenues over the sum of tax deductible costs less the value of depreciation and interest included in tax deductible costs in that tax year. At the same time, the limitation does not apply to costs of intangible services and rights not exceeding PLN 3 million in the tax year.

III. The new tax is to apply if a loss or income of less than 1% of revenue is reported

The draft provides for a new minimum income tax of 10% of the tax base, dedicated to companies which are taxpayers within the meaning of Article 3 clause 1 (i.e. tax residents), and also to tax capital groups which: generate losses from a source of income other than capital gains, or report a specific low profitability ratio within their operations, resulting from the ratio of revenues to deductible costs (i.e. the share of income in revenues constituting no more than 1% of the tax base). The minimum income tax will also apply accordingly to non-resident taxpayers conducting business activity through a foreign permanent establishment located in Poland, to the extent to which its revenues generated and losses incurred are connected with the activity of such permanent establishment.

The government intends to introduce, from 2022 on, the so-called minimum CIT for taxpayers who for a given tax year generated a loss on operations or whose income was too low to trigger the tax obligation. The tax is to amount to 10% of the tax base, which will include, among other things, a portion of the costs of debt financing, costs of acquisition of certain services or intangible rights, or deferred income tax.



IV. The tax base will include 4% of revenues

The tax base will be the sum of specific components, i.e. the value of 4% of revenues from a source other than capital gains; the value of debt financing costs incurred for the benefit of related entities; the value of deferred income tax resulting in an increase of gross profit/reduction of net loss; as well as the value of the costs of acquisition of certain intangible services or rights incurred for the benefit of related entities (from a country or territory applying harmful tax competition). For the purpose of determining the tax base, an algorithm for calculating the EBITDA will be included in the legislation. Thus, the tax base will include the surplus of debt financing costs incurred for the benefit of related entities over the amount calculated according to the formula: $[(P - Po) - (K - Am - Kfd)] \times 30\%$.

V. Tax on a portion of debt financing will be due

Pursuant to the new regulations, the tax base for the minimum CIT will include the portion of debt financing costs constituting a surplus of: total revenues from all sources (P) reduced by interest revenues within the meaning of Article 15c clause 13 (Po), over the sum of tax deductible costs (K) reduced by the value of depreciation write-offs included in tax costs in the tax year and referred to in Article 16a-16m (Am), and debt financing costs not included in the initial value of fixed or intangible assets, before deductions (Kfd). The tax base will also be affected by the value of deferred income tax resulting from disclosure in tax settlements of intangible assets not yet subject to depreciation. The provision will apply e.g. to goodwill or trademark if resulting in an increase in gross profit or a decrease in gross loss.

VI. The minimum CIT will apply to the costs of acquisition of certain intangible services or rights

The tax base includes also the costs of the acquisition of certain intangible services or rights. This applies to advisory services, market research, advertising services, management and supervision, data processing, insurance, guarantees and sureties as well as services of a similar nature; fees and charges of any kind for the use of, or the right to use, rights or assets (referred to in Article 16b clause 1 points 4-7 of the CIT Act); transfer of the risk of debtor's insolvency on account of loans other than those extended by banks and cooperative savings and credit unions, including within liabilities arising from derivative financial instruments and benefits of a similar nature – incurred directly or indirectly on behalf of related parties or entities having their place of residence, registered office or management in the territory or country specified in the regulations on tax havens, in the part in which such costs exceed by PLN 3 million in the tax year the amount calculated according to the following formula: $[(P - Po) - (K - Am - O)] \times 5\%$, where: P means the summed value of revenues from all sources, the income from which is subject to income tax; Po means interest revenues; K means the sum of tax deductible costs without deductions required by law; Am means depreciation write-offs included in tax deductible costs in the tax year; Kfd means debt financing costs classified as tax deductible in the tax year and not included in the initial value of fixed and intangible assets, before deductions required by law.

VII. Bad debt relief and PSI exemptions without impact on the minimum CIT

The tax base will be reduced by deductions referred to in Article 18 excluding, however, deductions under Article 18f, with the reservation that Article 27 clause 4a of the CIT Act applies accordingly. In this case, this means exclusion of the so-called relief for bad debts. Moreover, if calculating the tax due, the taxpayer makes deductions from the tax base or from the tax payable, and then receives a refund of the amounts deducted (in full or in part), such taxpayer will be required to add those amounts accordingly in the return for the tax year in which the refund was received. The tax base will also be reduced by income included in the calculation of tax-exempt income pursuant to Article 17 clause 1 points 34 or 34s (activity within PSI) for taxpayers benefiting from tax exemptions referred to in those provisions.



VIII. The new tax will not apply to certain groups of taxpayers

Regulations concerning the new tax will not apply to the following taxpayers: entities starting business activity (in the start year and two consecutive tax years immediately following the start year, which means that possible tax obligation will only arise beginning from the fourth year of activity; financial enterprises within the meaning of Article 15c clause 16 of the CIT Act (e.g. domestic banks, credit institutions, cooperative savings and credit unions, the National Cooperative Savings and Credit Union); taxpayers who in consecutive years (starting from their 4th tax year) reported a specified decrease in revenue (by at least 30%) compared to revenue for the immediately preceding year; entities with a simple organizational and legal structure, without extensive links – i.e. those whose shareholders or members are exclusively natural persons and the taxpayer company does not hold shares in the capital of another company, participation units in an investment fund or in a joint investment institution, all rights and obligations in aof an unincorporated company, or other property rights connected with the right to receive a benefit as the founder or beneficiary of a foundation, trust or another entity or legal relationship of a fiduciary nature. At the same time, if the initiation (commencement) of activity by a given entity (start-up) results from restructuring events (forms of transformation) specified in the regulations, exemption from minimum income tax will not apply.



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

IX. The minimum CIT paid will be tax deductible in subsequent years

The new tax will apply if a loss is generated on a source of income other than capital gains, or if the share of income from a source other than capital gains in revenues other than capital gains is no more than 1%. However, not taken into account when calculating the loss and the share of income in revenues, will be costs (recognised as deductible costs in the tax year, including by depreciation write-offs) resulting from acquisition of brand new fixed assets (groups 3–8 of the Classification). Taxpayers meeting the requirements specified in the new regulations will be obliged to pay the minimum income tax in the amount of 10% of the tax base. The amount of the minimum income tax paid for a given year will be deductible from tax calculated in accordance with Article 19 (classic CIT) in the tax return for 3 consecutive tax years immediately following the year in which the taxpayer paid the minimum income tax. It should be noted that the minimum income tax and classic CIT may to some extent burden one and the same income and consequently lead to double taxation. Introduction of the deduction mechanism will eliminate this situation. The minimum income tax will be calculated annually and paid to the tax office's account. Taxpayers will be obliged to disclose in their tax returns the tax base, any decreases thereof, and the amount of the minimum income tax.

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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