April 2021

As of May all limited partnerships CIT taxable

Limited partnerships which based on transitional regulations did not become CIT taxable persons at the beginning of January 2021 will become such taxable persons as of 1 May 2021. This may be avoided by transforming a limited partnership into a general partnership. It is not, however, possible to register a general partnership in the National Court Register on 1 May.

I. 1 May is the date as of which limited partnerships become CIT taxable persons

In accordance with the regulations adopted at the end of last year, limited partnerships have become CIT taxable as of 1 January 2021. That is the general rule. Transitional regulations, however, provide that a limited partnership may decide to apply the new regulations to the partnership and to the revenue and costs associated with participation therein as of 1 May 2021. In such cases, the limited partnership will obtain the status of a CIT taxable persons as of 1 May 2021. Thus the partnerships that have not transformed and do not yet pay CIT will have to do so as of 1 May 2021.

II. Limited partnership's first tax year will be shorter

If a limited partnerships decided to obtain the status of CIT taxable person as of May 2021, it would not close its books of account as at 31 December 2020. Thus its financial year would be extended. It is required to close its books of account as of the date preceding the day on which it obtains the status of CIT taxable person. If, therefore, it becomes CIT taxable as of 1 May, it must close its books of account as at 30 April 2021. Where a limited partnership obtains the status of taxable person, its first tax year will last from the day on which it obtained that status to the end of the financial year it has adopted. And so if a limited partnership's tax year was concurrent with the calendar year, and the partners decide that the partnership will become CIT taxable as of 1 May 2021, then the current financial year will end on 30 April 2021 (after lasting 16 months), whereas the first tax year as a CIT taxable person will last from 1 May 2021 to 31 December 2021 (8 months). After the books of account are closed as at 31 December 2021, the next year will again last a standard 12 months.

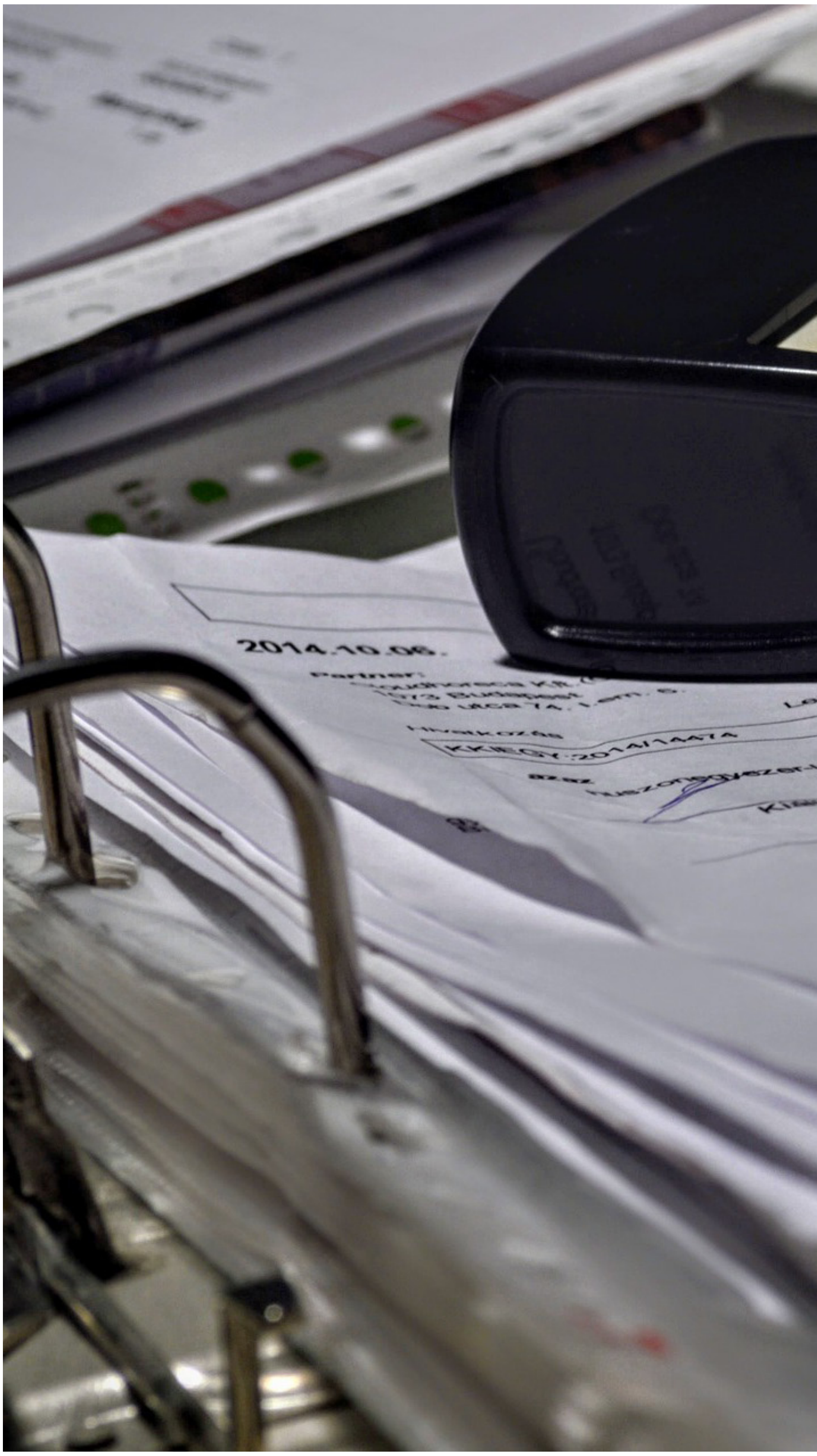
III. After switching over to CIT continuation applies

A limited partnership that has become a CIT taxable person continues the valuation of the tax value of assets it had made prior to the date on which it became CIT taxable, in particular with regard to the initial value of tangible and intangible fixed assets, the adopted depreciation/amortization method, rates and periods, as well as the amount of depreciation/amortization charges previously taken on those tangible and intangible assets. It is thus subject to the principle of continuation that arises out of accounting regulations.

BDO

IV. Partners taxed with CIT do not change their reporting periods

Changes in the duration of a limited partnership's financial year have no effect on the reporting periods applicable to its partners. Partners have not been given the right to report their PIT for a period other than the calendar year, and so they are still required to report the income received from the partnership from 1 January to 31 December 2020 in the return filed by the end of April 2021. Whereas the period from 1 January to 30 April 2021 will have to be included in the return filed for 2021 (i.e. by the end of April 2022). The accounting departments of such limited partnerships should therefore consider this fact in their documentation and prepare to allow the partners to correctly file their returns.



V. Partners subject to old rules until partnership status change

The income of a limited partnership's partners resulting from participation in the limited partnership, achieved by the limited partnership before it became a CIT taxable person, is subject to the provisions of the PIT and CIT acts in the wording in effect prior to the date on which the limited partnership became CIT taxable. If shares of a limited partnership were acquired or taken up by a partner prior to the date on which the partnership became CIT taxable, the partner's income from: redemption of shares or withdrawal from the partnership; sale of these shares for consideration; their contribution in kind to another entity; liquidation of the partnership – is reduced by the expenses incurred for the acquisition of a share in the limited partnership and by a portion that corresponds to the excess of revenue over tax-deductible costs generated by the partner before the limited partnership became CIT taxable, less payments made as a result of participation in the limited partnership and expenses that do not constitute tax-deductible costs.

VI. Limited partnership partners will get a tax exemption

As CIT taxable persons, limited partnerships will be taxed on the same principles as other companies. Whereas the income earned by partners, including limited partners, from the profits of a limited partnership, will be taxed as income from shares in the profits of legal persons. At the same time, a partial exemption will apply to a portion of a limited partner's income earned from shares in the profits of a limited partnership. This exemption would be applied to 50% of such income earned by a limited partner, but no more than PLN 60 thousand per year. The exemption would not, however, apply in cases when the links between the partners of a limited partnership or the manner in which the partnership is managed indicate that the partnership was formed to meet its partners' 'tax optimization goal'.

VII. Tax authorities have issued an interpretation on the effects of transforming limited partnerships

In a tax interpretation issued on 15 March 2021 (number 0111-KDIB1-1.4010.9.2021.2.ŚS) the tax authorities confirmed that transforming a limited partnership into a general partnership will allow the partners to avoid taxation of the partnership's income with corporate income tax (CIT). In the summary of the interpretation the tax authorities found that the submission by a general partnership formed from a limited partnership of the information referred to in Article 1 par. 3 point 1a letter a of the CIT Act (in the wording in effect as of 1 January 2021), i.e. information on CIT taxable persons and on PIT taxable persons who either directly or indirectly through non-CIT taxable entities hold rights to shares in the profits of the general partnership, will be effective in the sense that the general partnership successor of the limited partnership (formed as a result of the transformation) will not be a CIT taxable person.

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

VIII. It is not possible to register a general partnership transformed from a limited partnership on 1 May

As indicated in the information provided by the National Court Register (KRS), 1 May is a holiday. And thus a "new" general partnership may only exist as of 30 April or as of 4 May 2021. Thus the partnerships that do not manage to transform by 30 April will for a few days be CIT taxable with all of the consequences of that status. Among others, this would mean the need to prepare separate statements for the period until 30 April, then for the first three days of May (3-day period of CIT taxable status, or another if it takes longer than 3 days to register), and then for the third period starting from 4 May 2021 (or later, depending on when the limited partnership transforms into a general partnership). It is important to remember that a KRS entry is constitutive, i.e. law-shaping in nature. Its consequences only appear when the data are entered in the computer system.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.