

# Ministry of Finance wants to fix income tax regulations and Tax Ordinance

## I. Ministry of Finance has prepared a draft of numerous tax changes

A draft bill amending the Corporate Income Tax Act and certain other acts is ready (paper UD404). It provides for more than 20 changes in the CIT Act, the PIT Act and the Tax Ordinance, the Health Benefits Act and the acts that had previously amended income tax regulations. It introduces regulations that fix and clarify existing solutions, as well as defers the application of some of the institutions in effect as of 1 January 2022 and proposed in the Act of 29 October 2021. According to the ministry, the proposed regulations take into account the calls for change and signals from taxable persons.

We discussed some of these changes in our previous alert. We dedicate this issue to the remaining changes.

The Ministry of Finance has prepared extensive amendments to income tax regulations, including in particular the CIT Act. They are to change such provisions as those relating to tax haven transactions, flat-rate taxation, bad debt relief or the holding company regime. These are, however, only examples of changes, which are to affect more than 20 areas in total.

## II. Simplified provisions on so-called bad debt relief

As part of its changes to bad debt relief the ministry proposes lifting the provisions of Article 19f par. 19 of the CIT Act and Article 26i par. 19 of the PIT Act, under which taxable persons who make relevant increases or decreases arising out of bad debt relief must in their tax returns declare the receivables or payables to which those increases or decreases relate. The reason for the lifting of the said regulations is the fact that taxable persons – irrespective of their tax return related obligations – must prove the amount of receivables and payables that affect their tax base anyway. Doing away with a tax return attachment listing such data will simplify the administrative obligations of taxable persons.



### III. Change in regulations on Polish holding companies (PSH)

The holding company regime introduced at the beginning of 2022 is a certain alternative to the institution of tax group (PGK). The proposed changes are meant to clarify and improve the holding company regime regulations to make them simpler and more effective when it comes to their application and purpose of their introduction. In addition, the changes will make the holding company regime available to a wider circle of traders. The definition of holding company will undergo a significant change by removing the condition of no tax exemptions. The list of legal forms where a holding company may operate will also be broadened to include simple joint-stock companies. Major changes will be made in the definition of subsidiary by removing the condition of not holding more than 5% of shares or interests in other companies and holding all of the rights and obligations of an unincorporated entity, as well as of utilizing an exemption as part of a special economic zone or the so-called Polish Investment Zone. To simplify the holding company regime, as well as to make it more attractive to traders, the income tax exemption of 95% of the dividend received by a holding company is to be replaced with a full exemption.

### IV. Change in regulations on flat-rate taxation of corporate income

The Ministry of Finance intends to make numerous changes to the regulations on flat-rate taxation of corporate income (Estonian CIT). The changes cover the method used to determine income relating to expenses unrelated to business operations on expenses and amortization charges as well as impairment losses, associated with using passenger cars, aircraft, rolling stock and other assets used for the purposes of the taxable person's business operations, as well as for private purposes. In addition, under the proposed changes, the burden of proof that an asset is used only for business purposes rests with the taxable person. The second change is meant to clearly articulate the taxable person's right to choose flat-rate taxation of corporate income before the end of the taxable person's tax year. The objective of the third change is to eliminate the potential interpretative doubts arising out of the letter of the provision on the payment due date of income tax on so-called initial adjustments. It will also clarify the payment date of tax due on transformation income. There is also a change in the payment due date of flat-rate tax on distributed profits and income from profit to cover losses, advances on anticipated dividends and flat-rate tax on distributed income from net profit.



### V. Simplified building income tax refund procedure

The draft proposes simplifying the procedure for refunding tax on income from buildings by not imposing the requirement to issue a tax refund decision when there is not doubt as to the value of the refund. To recap, the tax on income from buildings is by definition neutral, which manifests itself in the ability to not pay it (when it is exceeded by the tax calculated in accordance with general rules), as well as by the ability to deduct it from the tax calculated in accordance with general rules – both at the level of advance payments and in the return for the year. Any amount of building income tax that is not deducted in this manner is refundable, at the taxable person's request, as long as the tax authority finds no irregularities in the amount of the tax liability (loss) calculated in accordance with general rules in the filed tax return, as well as with respect to building income tax. In practice, however, the application of the said regulations has revealed a problem associated with the building income tax refund procedure, caused by the fact that binding regulations do not contain a procedure for the verification and refund of the tax.

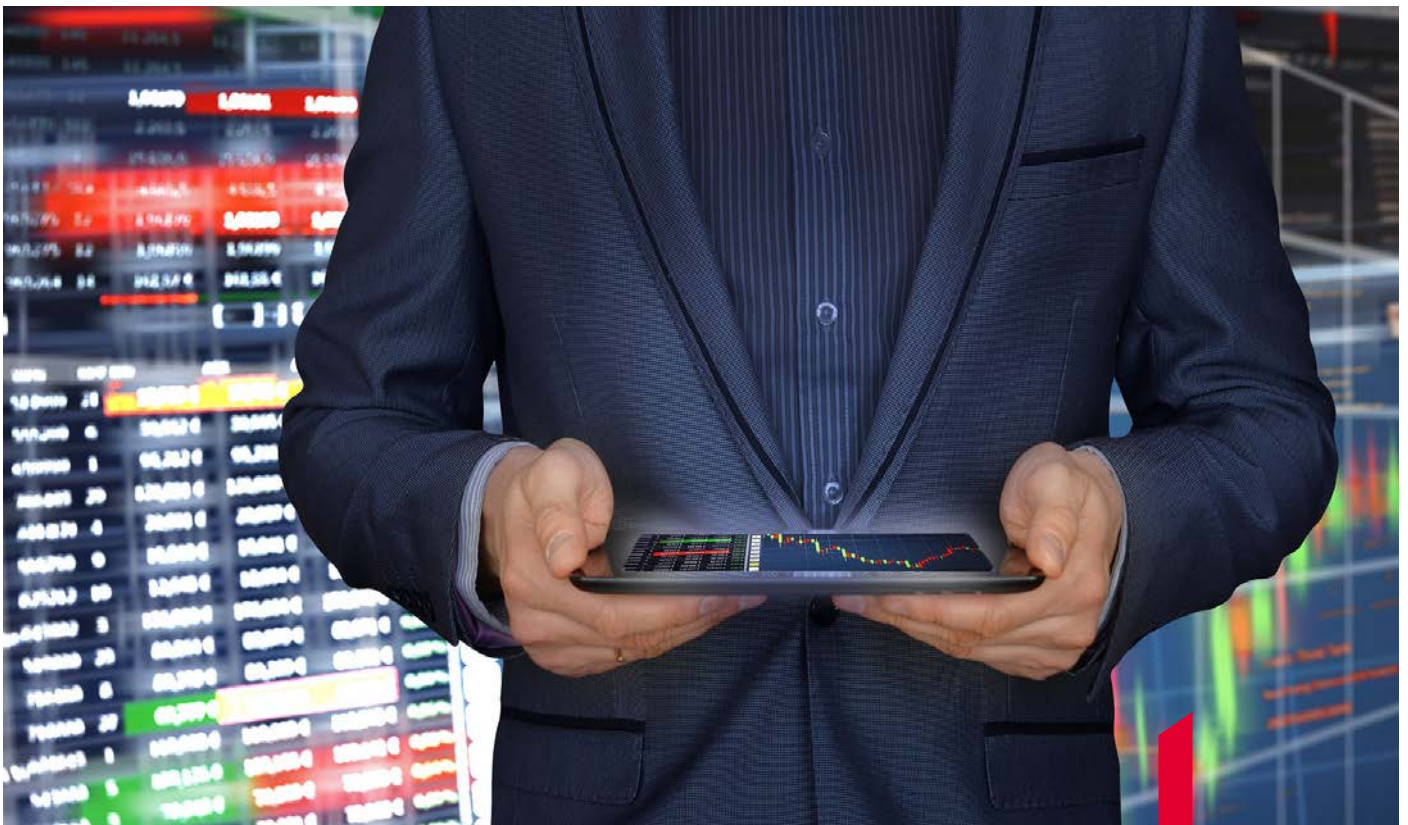


## VI. Change in regulations on documenting so-called tax haven transactions

The amendments are to realign the documentation thresholds (materiality thresholds) for direct and indirect tax haven transactions above which a tax liability is created, by raising those thresholds. For direct tax haven transactions – by doubling the thresholds (to PLN 200 thousand), whereas for indirect transactions – thresholds at different amounts for different types of transactions: a limit of PLN 2,5 million would apply to commodity and financial transactions, and a limit of PLN 500 thousand to other indirect transactions. Irrespective of the changes in the limits, the proposed amendments to the CIT Act provide for changing the documentation obligation in indirect tax haven transactions and eliminating the presumption of the beneficial owner's residence in a tax haven. Right now the documentation obligation applies to domestic (between two entities located in Poland), as well as cross-border transactions (between a Polish and a foreign entity). The amendments would clarify that the provision applies to beneficial owners of transaction receivables. Under the new regulations, if an entity required to assess whether the arm's length principle should be applied to a given transaction and whether documentation should be prepared, demonstrates with a declaration provided by the recipient of the receivable from a controlled or another transaction, that the entity is the beneficial owner of the receivable or that the beneficial owner is not a tax haven entity, then this will be sufficient to verify the documentation obligation.

## VII. Change in regulations on the requirement to provide model declarations

The amendments clarify the regulations on providing model income tax declarations. The intention of the regulations that require the minister of finance to provide model income tax declarations was in fact to impose a requirement to provide visualizations of electronic documents, rather than a model of that document as defined by the provisions of the Act on the computerization of the activities of entities that perform public tasks. In accordance with binding regulations, electronic document models are placed by the minister in charge of computerization in the Central Repository of Model Electronic Documents (CRWDE). Thus, in the ministry's opinion, providing the same model electronic document by the ministry of finance is not supported by binding regulations. Following the change, there will be no doubt that the requirement to provide declarations is limited to providing their visualizations rather than their schemas, which are provided by the minister of digitalization in the CRWDE.



## VIII. Clarification of obligation to report contracts with non-residents

The ministry's amendments also call for a change in the regulations on reporting contracts with non-residents to the head of the relevant tax office in cases when the taxable person is required to submit transfer pricing information. There will be no obligation to prepare information on contracts with non-residents for entities required to prepare transfer pricing information. The exemption from the obligation to prepare transfer pricing information on contracts with non-residents will not apply to those entities whose transfer pricing information lists so-called tax haven transactions. Those entities, having met specific statutory conditions under the Tax Ordinance and tax regulations, will be required to file ORD-U, as well as transfer pricing information.



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## IX. Change in premiums for lump-sum taxable traders

The ministry also plans to make a change consisting of introducing an adequate premium calculation base determined ex officio by the Social Insurance Office (ZUS) for traders taxed in the form of lump-sum tax on registered income in situations when the insured trader fails to report to ZUS his monthly income from business operations. The new regulations are to provide that when an insured fails to report his monthly business income or revenue, the Social Insurance Office will ex officio determine his health insurance premium for that month at the amount of the minimum wage in effect on the first day of the insured's premium year; 60% of the average monthly salary in the business sector in the fourth quarter of the previous year, including distributions of profit, announced by the President of the Main Statistical Office. This premium amount may change following an audit or if relevant data are provided by the Head of National Tax Administration or the head of the relevant tax office.

**NOTE:** Owing to the fact that the amendments cover various regulations we have chosen to discuss them in two tax alerts.

This alert contains part 2.

Part 1 was sent to you last week.

It is also available on our website.

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

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