



Withholding Tax in the Era of BEPS, CIVs and Digital Economy

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Withholding Tax for International Transactions

Withholding Tax for International Transactions

WHT for international transactions under domestic law

General overview of the system:

- Up to now model of WHT for international transactions adopted in Poland does not diverge from solutions existing in purely domestic settings.
- Up to now special or additional requirements are provided for the WHT system for international transactions, except for the obligation to submit a certificate of residence by non-resident taxpayers in tax treaty situations.
- New rules will be introduced upon the Act of 23 October 2018 amending PITA, CITA and GTA and other acts.
- Pay and refund system will replace the current application of WHT exemptions or treaty WHT rates.

Withholding Tax for International Transactions

Type of domestic-sourced income subject to WHT

Examples under PITA regulations the following types of Polish-sourced income are subject to a final WHT if paid cross-border by a resident taxpayer to non-resident individuals:

- 1) dividends (19% of the gross income),
- 2) interest on savings (19% of the gross income),
- 3) gains from capital funds (19% of gross income),
- 4) gains from the sale of securities (19% of gross income),
- 5) selling private properties (as a rule, 19% of gross income),
- 6) royalties (20% of gross income),
- 7) director's fees (20% of gross income),

Reduced rates of WHT might apply under the DTCs

Withholding Tax for International Transactions

Type of domestic-sourced income subject to WHT

Similarly, under the CITA regulations:

- (i) dividends, (ii) interest and (iii) royalties paid by a resident taxpayer to non-resident recipients are subject to a final WHT levied on gross income.
- The rates are: 19% for dividends, and 20% for interest and royalties.
- Reduced rates of WHT might apply under the DTCs.

Withholding Tax for International Transactions

Source rules for different types of income - sealing of tax system by boarding the use of WHT

Since 2017 Polish-sourced income on non-resident taxpayers shall include **in particular** income from:

- a) work performed in PL, irrespective of the place where remuneration is paid (PIT-payers only),
- b) in person activity performed in PL irrespective of the place where remuneration is paid (PIT-payers only),
- c) business activity, including through a foreign establishment located in PL;
- d) immovable property located in PL or rights to such property, including from its disposal in whole or in part, or from disposal of any rights to such property,;
- e) securities and derivatives other than securities, admitted to public trading in PL as part of the regulated stock exchange market, including those obtained from the disposal of these securities or derivatives, or the exercise of rights resulting from them;
- f) the transfer of ownership of shares in a company, of all rights and obligations in a partnership without legal personality, or units in an investment fund or a collective investment undertaking, in which at least 50% of the value of assets is constituted, directly or indirectly, by immovable properties located in PL, or rights to such immovable properties.

Withholding Tax for International Transactions

Source rules for different types of income - sealing of tax system by boarding the use of WHT

Moreover, the **receivables**:

(i) settled,

including **receivables**

(i) put at disposal,

(ii) paid out or

(iii) deducted,

by natural persons, legal persons, or organizational units without legal personality, **having their place of residence, registered office, or management board in PL**, irrespectively of the place of conclusion of the agreement and place of performance of service— are deemed to be sourced in PL.

Withholding Tax for International Transactions

Withholding tax under treaty law

- Polish tax treaty practice is based on both the OECD and UN Models, with respect to WHT of **dividends, interests, royalties, rental fee, service fee, pension income** etc.
- Also, the elimination of double taxation of **capital gains** in the Polish tax treaty practice is influenced by both: the OECD and the UN Models.
- The majority of DTCs concluded by Poland contain the “**immovable property clause**” as recommended by Art. 13(4) of the OECD Model before its update in 2017.
- The DTCs concluded by Poland generally follow the OECD Model's recommendations with respect to taxation of **employment income, directors' fees, artists and sportspersons, government services and payments made to students or business trainees or apprentices.**
- The number of deviations from the OECD recommendations is very limited and does not have an impact on tax policy issues (e.g. he amended DTC with Cyprus with respect to directors' fees).

Withholding Tax on CIVs

Withholding Tax on CIVs

Special procedure for treaty applicability for CIVs

No special rules for the investment income derived from CIVs

Limited number of DTCs concluded by Poland provide a clear confirmation of the application of the relevant DTC to PL and foreign CIVs (e.g. DTC with Luxemburg).

Since 1st January 2017 **exemption** applies only to open-ended investment funds and specialist open-ended investment funds established on the basis of the Investment Fund Act, excluding specialist open-ended investment funds applying investment rules and restrictions laid down for closed-ended investment funds.

This exemption applies also to collective investment institutions having their registered office in Poland or in a EU/EEA MS, that satisfy all of the following conditions:

- a) their entire income, irrespective of where it is earned, is subject to income tax in the state, where their registered office is located,
- b) the sole object of their activities is the collective investment of funds collected through public offering of their units in securities or money market instruments,
- c) they operate on the basis of a permission issued by the competent financial market supervision authorities of the state where their registered office is located,
- d) their operations are directly supervised by the competent financial market supervision authorities in the state where their registered office is located,
- e) they have a depositary to keep their assets,
- f) are managed by entities that operate on the basis of a permission issued by the competent financial market supervision authorities in the state where their registered office is located.

Withholding Tax on CIVs

Procedure for treaty applicability for CIVs in the absence of special rules on CIVs

- Since 1st January 2017 the concept of **beneficial owner** was implemented to the internal legal order.
- An entity making payment exempt from a tax is obliged to obtain the written statement, indicating that the company or its foreign establishment is the beneficial owner of the receivables paid.
- The statement shall be obtained if the foreign entity receives an income within the territory of Poland from: (i) interest, (ii) copyright or related rights, (iii) rights to inventive designs, trademarks or ornamental designs, including from the sale of those rights, (iv) from compensation for disclosure of a secret of a recipe or production process, (v) for use or right to use an industrial device, including means of transport, a commercial device or a scientific device, (vi) for information associated with industrial, commercial or scientific experience (know-how).
- This obligation imposed on payor is general and not limited to CIVs.

Withholding Tax in the Digital Economy

Withholding Tax in the Digital Economy

General overview of actual or potential revenue loss caused by the advent of digital economy

- Awareness of Polish officials, doctrine and tax experts is growing.
- Tendency to discuss that issue at the political level is still growing – the Government fully supports initiatives undertaken on the international level, which purpose is to react on the tax avoidance strategies, using effects of the digital revolution.

Withholding Tax in the Digital Economy

Classification of income from digitised transactions

- No specific provisions, general tax provisions shall be referred to
- 3 possible classifications:
 - a) business income,
 - b) income from independent personal services,
 - c) royalties.

Withholding Tax in the Digital Economy

- **On-line download of computer software or other digital content – classification for income tax purposes (e-book, mp3, software)**
- On the ground of both domestic and international regulations this class of income may be categorized in a few different manners depending on details of facts of the case.
- On the international level, **one-time download** may be treated either as a **royalty** or as a **business income** not rather as **income from independent professional service**.
- **Key question: what is the payment made for?**

Withholding Tax in the Digital Economy

Taxation of continual use of software and other digital contents (cloud computing, downloading, accessing, viewing, streaming, etc.)

- Similar issues: how to classify it for income tax purposes?
- Again, the key question is what is the payment made for?
- Payment made for the service delivered by the provider.

Withholding Tax in the Digital Economy

Applicability of WHT to Digital Economy

Wider resort to WHT

- In PL there is a tendency to extend the scope of the domestic withholding tax - which is collected by the payor when there was no double tax treaty concluded between Poland and a state of residence of his contractor.

WHT obligations for customers in B2C transactions

- No tendency to extend WHT obligations on end consumers or financial intermediaries.

Information reporting and net basis taxation

- In Poland there does not exist any alternative mechanism, which allows replacing the withholding tax by the net income taxation combined with the additional tax reporting.
- In political debate such an idea is also absent.

Thank you for your attention/ Questions