

## Settlement of 2023 tax on shifted profits is just around the corner

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CIT payers with calendar year as their tax year may be obliged to settle the tax on shifted profits in their CIT return for 2023 by 1 April 2024. The tax on shifted profits applies to certain payments of passive nature made to certain related parties seated abroad. The tax rate is 19%.

The rules for calculating and settlement of the tax on shifted profits are complicated and still unclear, whilst the upcoming deadline puts the taxpayers under pressure to comply with the regulations.

### Which categories of passive expenditure are concerned?

- Fees for intangible services including consulting, market research, advertising, management and control, data processing, insurance, guarantees and collaterals (as well as services of a similar nature);
- Various kinds of fees and charges for the use or right to use intangibles, such as copyrights or licenses (royalties);
- Costs related to transfer of debtor's insolvency risk on loans other than granted by banks and cooperative credit unions;
- Debt financing costs, in particular interest, fees, commissions and payments of similar nature;
- Fees and remuneration for the transfer of functions, assets or risks ('exit fee' payments).

### When will taxation occur?

The tax liability shall arise when the following circumstances occur jointly:

- qualifying expenditures of passive nature are tax deductible and exceed 3% of total tax deductible costs reported by the Polish taxpayer;
- foreign payment recipient's effective tax rate applicable to the given type of payment is lower than 14.25%;
- payments of passive nature exceed 50% of gross revenue of the foreign payment recipient;
- payment recipient transfers passive income to another entity and recognizes it as tax deductible, or:
  - such payments reduce its tax base/payable tax, or
  - they constitute distributable profits, e.g. through dividends.

### Important facts

- The Polish burden of proof for demonstrating that the tax on shifted profits liability did not arise encumbers the Polish taxpayer. For this reason, it is the Polish taxpayer who shall collect the relevant information from the related foreign contractors;
- Payments to entities seated in the EU/EEA are not subject to tax on shifted profits, provided that they carry out substantial and genuine economic activity (i.e. have so-called business substance in the Polish meaning of this term);
- Tax on shifted profits may be reduced by the amount of withholding tax paid by the Polish taxpayer on the qualifying payments of passive nature;
- Tax on shifted profits is declared on the CIT/PD return - an attachment to the annual CIT-8 return.

### How can we assist?

- Assessment of circumstances for occurrence of obligations on the grounds of the Polish tax on shifted profits as well as verification of the tax position of foreign contractors (full scope or limited scope verification - depending on the arrangements and needs);
- Assistance in preparation of the documentation evidencing and supporting the circumstances related to the foreign contractors, which result in the lack of obligations on the grounds of tax on shifted profits;
- Verification of the business substance attributed to recipients of passive payments from the EU/EEA;
- Calculation of the shifted profit tax (with consideration of any possible deductions) as well as support in preparation of the CIT/PD appendix to the annual CIT return.

If you are interested in verification of how your business may be affected with the above regulations, please contact:

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