GloBE: Latest proposals from the Ministry of Finance on the shape of the R&D tax relief

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On 9 April, a meeting was held with representatives of the Income Tax Department of the Ministry of Finance. **The purpose of the meeting was to discuss two scenarios (A and B) for changes to the regulations on the application of the so-called R&D relief** – the introduction of which is connected with the entry infto force of the Act of 6 November 2014 on Top-up Taxation of Constituent Entities of Multinational and Domestic Groups (**GloBE Act**).

It is envisaged that one of two scenarios (A and B) will be chosen – with the proviso, however, that under each of the proposed scenarios two models for the relief settlement are distinguished.

Scenario A

Under Scenario A, two models are distinguished: A1 and A2 – the taxpayer will be given the right to choose which model of the relief settlement he will use. **The choice will be a split alternative – choosing one model will mean that it has to be used for a certain period of time.**

Model A1

Model A1 would mean the continuation of the R&D relief, under which qualified costs (all of which are provided for, inter alia, in the CIT Act) will continue to be deducted from the income tax base (while retaining the current level of deduction and the possibility to deduct qualified costs – not deducted in a given year – in subsequent years). Under the A1 model, on the other hand, the possibility to use the so-called innovative employee tax relief (from Article 18db of the CIT Act) will disappear – which may not prove to be overly burdensome, as in FY 2023 just over a hundred CIT taxpayers benefitted from this relief.

From the GloBE Act perspective, in our view, the A1 model would not, however, constitute a 'Qualified Refundable Tax Credit' (QRTC) - thus, it would not solve the problem of Polish top-up tax taxpayers (provided for in the GloBE Act) benefiting from this relief. This solution, on the other hand, could be acceptable for CIT taxpayers who are not GloBE taxpayers.

Model A2

An alternative model for the relief settlement would be to limit it to the structure of the current innovative employees tax relief – the catalogue of eligible costs would be limited to personnel costs, and the deduction (at the same level for each eligible person) would be granted to the taxpayer from the amount of PIT advances collected from the salaries **of all employees** (and not only those who devote at least 50% of their working time/contract or work – in a given month – to the R&D works).

A significant disadvantage of this solution is the limitation of eligible costs exclusively to personnel costs, which may be particularly troublesome for those taxpayers who show as

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eligible costs, inter alia, materials and raw materials related to the R&D activity (e.g. entities from the production sector) or for whom the amount of PIT advances on even all employees is not enough to make the proposed solution equal to the current R&D relief.

On the other hand (in the case of the legislator's choice of Scenario A), the A2 model would most likely be chosen by GloBE taxpayers – hitherto benefiting from the R&D relief. This is because it would not – to the same extent – negatively affect the ETR (Effective Tax Rate). However, it does not appear from the assumptions presented by the MF that the non-deducted personnel costs would be deductible in subsequent years – which would be a significant disadvantage of this solution, and the impact on the ETR does not appear to be so clearly neutral either.

Scenario B

Scenario B envisaged splitting the current R&D relief into two reliefs (the differentiating factor here would be the type of eligible costs). Scenario B was split into two models (1 and 2) – with the important proviso, however, that a taxpayer (unlike in Scenario A) could apply both Model 1 and Model 2.

Model B1

The Settlement under Model B1 would follow the rules provided today for the R&D relief – except that the catalogue of eligible costs would not include personnel costs. The level of deduction of eligible costs other than personnel costs would remain at the current level (maintaining the distinction of the status of certain taxpayers). The amount of unused eligible costs would be refunded to the taxpayer (as a cash refund) no later than at the end of the 4th tax year from the acquisition of the right to use the R&D relief (including the year of the right acquisition). The reimbursement would only be possible under condition that the deduction was used from the tax base in subsequent years after the year of acquisition of the right to the relief. According to the MF, this settlement model would comply with the requirements of the QRTC.

Model B2

Model B2 could be used in conjunction with Model B1, but only in relation to eligible costs that are personnel costs. In this case, the deduction would be based on the assumptions of the current innovative employees tax relief. Indeed, the payer's deduction would be available on the PIT advance payments collected from all employees (similar to the above-mentioned A2 model). The level of deduction would be the same for all taxpayers, although the non-deductible portion of eligible personnel costs could not be deducted in subsequent years (which is the key disadvantage of this solution at this point). The relief under the B2 model would not meet the requirements of the QRTC, but its negative impact on the ETR would be – but also only to a certain extent – limited.

Comments on the said proposals should be sent (to the MF) until 15th April. We may forward them on your behalf.

In case you are interested in the above information and its impact on your business, please contact:

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