Simplified mergers are now clearly neutral for CIT purposes

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Amendment to the CIT Act within the framework of Energy Law changes

On August 5, 2025, the Act amending the Energy Law and certain other acts clarified the Corporate Income Tax (CIT) regulations regarding mergers conducted under Article 515^1 of the Polish Commercial Companies Code. This provision allows for a merger without the acquiring company issuing new shares.

This mechanism can be applied when one shareholder directly or indirectly holds all shares in the merging companies, or when shareholders of the merging companies hold shares in the same proportion in all of the merging companies (typically applying to sister companies).

The amendment changed the wording of Article 12, paragraph 1, point 8d of the CIT Act. The new wording is:

"*the market value of the assets of the acquired or divided entity received by the acquiring or newly formed company, as determined on the day preceding the merger or division, in the part exceeding the issue value of the shares allocated to the shareholders of the merged or divided companies;* ***however, no revenue arises in the case of a merger conducted on the basis of Article 515¹ § 1 of the Act of 15 September 2000 – Polish Commercial Companies Code***;"

The key change is the final sentence, which was added to the original text of the provision.

A brief history of the dispute with tax authorities

For years, tax authorities took a restrictive approach, arguing that revenue arose from simplified consolidation mergers in the amount of the market value of the acquired company's assets. For example, this was the case in tax rulings such as:

- 0111-KDIB1-1.4010.251.2025.5.RH (issued two weeks ago)
- 0111-KDIB1-1.4010.298.2025.3.AND

These tax rulings cover cases when the acquiring company did not issue its own shares.

In contrast, administrative courts consistently sided with taxpayers, ruling that such transactions were tax-neutral. Examples include:

- The Provincial Administrative Court in Warsaw ruling of July 10, 2024, ref. no. III SA/Wa 947/24
- The Provincial Administrative Court in Warsaw ruling of October 3, 2024, ref. no. III SA/Wa 1425/24
- The Provincial Administrative Court in Warsaw ruling of December 11, 2024, ref. no. III SA/Wa 2256/24 (a case where our MDDP team represented a client)

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New regulations concerning divisions

The new act also covers divisions by spin-off. The new provisions bring the rules for divisions by spin-off closer to the tax treatment of in-kind contributions.

Impact of the changes

The amendment now explicitly confirms that consolidation mergers, which can be carried out without the acquiring company issuing shares, will not result in revenue for the acquiring company.

Thus, the legislator has settled a major interpretative dispute. The risk of revenue arising from the market value of the acquired company's assets, which was previously confirmed by tax authorities in their interpretations, no longer exists.

However, it is important to remember that the tax consequences of a merger (including a merger with no shares issuance) may be assessed under other provisions of the CIT Act. These provisions make the tax neutrality of a restructuring conditional on it having a legitimate economic purpose, among other things.

👉 You can read more about the role of business justification here: Business Rationale – a key element of safe restructuring | MDDP

Significance for capital groups

This change significantly simplifies reorganizations within capital groups, both in terms of mergers and divisions. Although the amendment was introduced outside of a dedicated tax law amendment, it should be considered a positive development. As a result, it is now possible to implement intra-group restructurings without the risk of potential tax liabilities, provided that all other conditions, including a valid business justification, are met.

If you have any questions, please contact:

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