Major changes to WHT opinions and tax rulings – key assumptions of the draft legislation

• 10 AUGUST 2026 •

The Ministry of Finance has recognised that excessive procedural differences between the issuance of withholding tax [WHT] opinions and individual tax rulings unnecessarily complicate the system of tax interpretation instruments. As a result, assumptions for amendments to the Polish Tax Ordinance have been published on the website of the Chancellery of the Prime Minister.

The proposed changes may be significant for all taxpayers relying on individual tax rulings, as well as entities that already hold or plan to apply for WHT opinions.

The Ministry notes that the current regulations no longer reflect economic realities or the practical application of tax law.

An additional challenge is the vast database of tax rulings, which already contains more than half a million decisions, making it increasingly difficult to identify the current prevailing interpretation practice.

Planned key changes

1. Five-year validity period for individual tax rulings

The most significant change is the proposed departure from the indefinite validity of individual tax rulings.

Once the new regulations enter into force:

- individual tax rulings will remain valid for five years;
- taxpayers will be able to apply for their extension for a further five-year period;
- the extension procedure is intended to be simplified and free of charge.

2. Extension of the validity period of WHT opinions

The draft also provides for changes concerning opinions on the application of withholding tax preferences.

Their validity period will be extended:

- from the current 36 months to five years; according to the legislator, this is intended to harmonise the rules applicable to WHT opinions and individual tax rulings;
- holders of WHT opinions will also be able to apply for their extension before the end of the validity period;
- the draft is also expected to introduce a form of tacit approval (silent consent). If a taxpayer submits an application for an extension and the tax authority does not issue a decision before the WHT opinion expires, its validity will automatically be extended for another five years.

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Other important issues

- the draft is also expected to clarify the concept of "established interpretation practice" and specify the conditions for benefiting from the protection resulting from such practice. A provision is also expected to be introduced requiring tax authorities to take established interpretation practice into account in tax proceedings;
- general tax rulings – extension of protection to periods preceding the date on which a general ruling is issued;
- taxpayers will be able to choose whether they rely on a general tax ruling or on the established interpretation practice of the tax authorities;
- introduction of rules governing the expiry of the legal protection arising from an individual tax ruling where the provisions forming the basis of that ruling are amended, and, with respect to WHT opinions, where the relevant provisions of the applicable double taxation treaty on which the opinion is based are amended.

Transitional provisions for existing tax rulings

The rules applicable to tax rulings issued before the new legislation enters into force are particularly important:

tax rulings issued before 1 January 2023 will expire on 30 June 2028;

tax rulings issued between 1 January 2023 and 31 December 2027 will expire five years after their issuance, but no earlier than 1 January 2029.

A simplified extension procedure is envisaged for rulings with less than six months remaining before their expiry.

What does this mean for taxpayers?

The planned changes mark a shift away from indefinite tax protection towards a system of periodic review of individual tax rulings.

On the one hand, taxpayers will benefit from a longer validity period for WHT opinions, the possibility of automatic extensions of protection and a broader scope of protection resulting from tax interpretation instruments. On the other hand, they will need to monitor the validity periods of their existing rulings and assess whether they remain consistent with current legislation, tax guidance and the practice of the tax authorities.

Once these assumptions are translated into specific legislation, it may be appropriate to review existing individual tax rulings and WHT opinions in order to assess the impact of the planned changes on the scope of available tax protection.

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