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| Tax Capital Groups in Poland

General information

In accordance with the Polish Corporate Income Tax ("CIT") regulations, not only the individual company but also a group of at least two entities (limited liability companies or joint-stock companies) registered in Poland can be separate Polish CIT payers. This is done through forming a Tax Capital Group („TCG”) including entities linked by capital relationships.

TCG's are created for a period of at least 3 tax years upon signing of an agreement by its member-companies in the form of a notary deed (it is possible to further extend the initially reported period of operation). The agreement must present a detailed structure of the group (list of member-companies, internal relations, equity amounts, etc.). Also, the company representing the TCG should be indicated, as well as the adopted tax year.

TCG's should be registered with the tax office appropriate for the representing company. Once a TCG is up and running, the agreement cannot be extended to include other companies. What is important is that CIT payments are calculated, collected and paid by the representing company and so reported to the tax office. The companies forming a TCG are jointly and severally liable for its CIT liabilities for the period of the group's existence.

Conditions for setting up a TCG

It is worth noticing, that except for the above mentioned issues, the investor interested in a TCG should consider that the following conditions should be met to set up and manage the TCG:

- TCG's may be formed by companies with an average share capital not lower than PLN 1 million (approx. EUR 250k as of July 2010);
- TCG's can only be formed by subsidiaries 95% owned by a parent company whilst these subsidiaries cannot hold any shares of other TCG-member companies;
- As at the date of the formation of a TCG, any of the TCG members may have outstanding tax liabilities;
- The profitability ratio of TCG's cannot be lower than 3% for each year.

Advantages of TCG's

1. Accelerated utilization of tax losses

Because of the fact that CIT is due on the income of a TCG as a whole, its tax position (either income or loss) is calculated by combining aggregated income and aggregated losses of all the companies. It may be very advantageous in many cases giving the possibility to set off the taxable income of one company against the tax loss of another company (companies) of a TCG.

To give an easy example: without creating a TCG, if Company A in the yearly tax return shows PLN 1 million of taxable income and its sister Company B shows PLN 1 million of tax loss, there is a corporate tax of PLN 190.000 to be paid by Company A (under the current 19% CIT rate), whilst Company B may only set off its tax loss against its potential profits of the following 5 years, but only up to 50% can be deducted in each year. Under such regulations the tax losses may be often wholly or partially "lost".

The above scenario does not exist when Companies A and B act under the same TCG. In this case there is no CIT due for a given year (PLN 1 million loss is compensated with PLN 1 million income) which would definitely please the shareholders of both entities. The possibility of “cancelling” the profits earned by one company by the loss incurred by another, is the biggest advantage of setting up of a TCG that may bring material cash savings.

2. Transfer pricing

Another advantage of TCG’s relates to the transfer pricing issue. According to the Polish transfer pricing regulations, the tax authorities may compare the conditions adopted between the related parties (e.g. foreign investor and his Polish subsidiary) with any other comparable market condition agreed between independent entities. On that basis, the authorities may disregard conditions agreed between related parties (particularly prices of services and goods) claiming that the transactions are not economically justified. Such claims may lead to tax authorities assessing the tax result of a given company, which brings an additional tax cost (more information about the transfer pricing regulations in Poland to be found in a separate article in the “Taxes” section).

Keeping the above in mind, it should be emphasized that for the companies forming a TCG, the transfer pricing provisions are not applicable and the members of a TCG may determine the conditions of the intra-group transactions freely, without risk of negative consequences of the tax authorities’ intervention.

3. Specific treatment of intra-group donations

Another important advantage of a TCG results from the specific treatment of donations between the group members. According to the general Polish tax rule, donations cannot be regarded as the donor’s tax deductible cost, however the exception was made for intra-TCG donations.

Practical aspects – how it works in Poland?

Because such donations are a tax deductible cost to the donor and constitute a taxable income to the recipient, donations within the a TCG are tax neutral.

Among Polish taxpayers, the idea of TCG's was broadly assumed to allow tax efficient structuring of business relations between related parties, allowing to legally reduce the overall tax burden. TCG's can be seen as an interesting alternative to building a group of Polish partnerships which, as a rule, are transparent for tax purposes in Poland and therefore, it is possible to immediately utilize the tax losses within the group of related partnerships.

Unfortunately, although the TCG concept was introduced to Polish Law in 1996, this method of consolidation has never been popular in Poland due to the above described restrictions on forming and managing a TCG. The said restrictions have been slightly alleviated but it is still extremely difficult to meet all the relevant conditions. This is why in 2008 there were 15 TCG's in Poland while in 2004 only 5.

Polish taxpayers emphasize that in many EU countries the regulations concerning setting up of a TCG are more liberal than in Poland. For instance, in Italy not only limited liability companies or joint-stock companies can form a TCG, but also partnerships, cooperatives or insurance agencies. In Germany, even 50% ownership of third party's shares allows to enter into the same TCG.

The Polish tax authorities argue that our law is not particularly restrictive as, by way of example, in Denmark, where TCG's can only be formed by subsidiaries fully owned by a parent company. Moreover, according to the French law, TCG's may be created for not less than 5 tax years.



This is why the Polish Ministry of Finance is not planning to amend the regulations concerning Polish TCG's in the near future, which means that the number of the existing TCG's in Poland may not increase significantly.