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| Taxation of dividends paid by the Polish companies

Introduction

Profitable entities can pay money to the shareholders as a dividend. Dividend paid by a Polish company is principally subject to taxation with a 19% rate. Tax on dividends is a withholding tax ("WHT") levied on the dividend payer who becomes the dividend tax remitter. Such a solution (limitation of dividend recipient's responsibilities) is intended to ensure the dividend tax collection which is important with respect to payment of dividends outside the Polish jurisdiction.

The method of dividend taxation in Poland depends on the following:

- who is the dividend recipient (legal person or individual),
- what is the dividend recipient's residence (Polish or foreign).

Dividend taxation rules are not set in one Polish Act. They are spread across corporate income tax (CIT) and personal income tax (PIT) laws, along with Double Tax Treaties ("DTT") signed by Poland. DTT's allow to avoid the situation where dividends paid from Poland abroad are taxed twice. Poland has entered into DTT's with 84 countries. It should be emphasized that these DTT's have priority over Polish domestic law.

In many cases dividends paid by a Polish resident to the foreign company can be taxed with a lower rate than the standard 19%. It is possible that the tax rate is reduced under the DTT's between Poland (country of tax remitter) and the country of dividend recipient. According to these DTT's, WHT on dividend is limited, in most cases to 5%, 10% or 15%.

Dividends paid to foreign legal persons

It is worth noticing that in order to benefit from the lower WHT rate, the tax remitter should possess the certificate of residence issued by the tax authorities of the country where the dividend recipient is registered. What is more, the dividend recipient is required to declare in writing that he is not exempt from tax on all its income.

Apart from the reduced WHT rates from DTT's, there is a general exemption from WHT on dividends paid by a Polish companies to non-resident companies. This exemption stems from the implementation of the EU Parent-Subsidiary Directive into Polish Tax Law.

Income (revenue) from dividends can be exempt from income tax, if the conditions below are met:

- the dividend payer is a company being an income tax payer with its seat or management office in Poland,
- the dividend recipient is a company liable to income tax on the total amount of its income in EU Member state (but other than Poland) or in other state belonging to the European Economic Area (Norway, Island or Lichtenstein), irrespective of the place where it is earned.

This exemption can be applied if the dividend recipient (foreign shareholder) holds (or will hold) minimum 10% of shares in the dividend payer (Polish subsidiary) during the period of at last 2 years.

From 2011 there are additional conditions to benefit from the above exemption:

- the dividend recipient cannot be exempt from tax on all its income, regardless of its source,
- there is a legal basis to obtain tax information from the tax authorities of the country where the dividend recipient is registered.

The tax remitter should pay WHT by the 7th day of the month following the month in which the tax was withheld. The summary yearly declaration should be sent to the competent tax office by the last day of the first month after the end of the tax year.

Furthermore, by the end of the third month of the year following the tax year, another declaration should be prepared including information about the revenue (income) derived by the foreign legal person. This declaration should be prepared even if there is actually no WHT to be paid under the DTT or Parent-Subsidiary Directive.

Dividends paid to Polish individuals

Dividends received by individuals constitutes income from capital gains. This income arises on the date of payment or the date of making the dividend available to the individual shareholder and is subject to 19% flat-rate income tax. Dividend revenue cannot be deducted by any tax deductible costs which are usually declared by taxpayers with respect to other sources of income (e.g.: income from employment contract or business activity).

It is the dividend payer to withhold the 19% WHT (as a tax remitter). WHT should be transferred to the tax office by the 20th day of the month following the month in which tax was collected. The tax remitter is also obliged to submit a special declaration to the tax office showing the relevant tax amount. Therefore, dividend received and the tax withheld should not be reported by the recipient of dividend in his annual tax return.