

ANTI-CIRCUMVENTION CLAUSE – THE SEJM HAS PASSED A LAW TO AMEND TAXES MANAGEMENT ACT

On 13 May 2016, the lower chamber of Polish Parliament (Sejm) adopted draft law to amend the Taxes Management Act by introducing the so-called anti-circumvention clause (parliamentary paper no. 367).

This provision is designed to prevent businesses from making artificial transactions which have no business rationale but serve the sole purpose of obtaining tax benefits. According to the proposed law, the clause will apply only to transactions which will give the taxpayer benefits worth more than PLN 100,000 within a year. In practice, if certain transactions are suspected of having been made for the sole purpose of obtaining tax benefits, the competent authorities can question the transactions and assess the right amount of tax (as if the transactions never happened).

Taxpayers will be able to apply to the Finance Minister for what is called an "assurance opinion", which is supposed to provide assurance that taxpayer's conduct will not be treated as an artificial scheme designed solely for the purpose of obtaining tax benefits. The assurance opinion will be issued for a fee. The new law provides for the establishment of Tax Avoidance Board to give opinions on controversial tax avoidance issues. The Board, which will be appointed by the Finance Minister, is to be composed of representatives of various institutions.

Importantly, the anti-avoidance clause will apply to **tax benefits** obtained after the effective date of the new regulations. Thus, the scheme will catch also earlier transactions if the relevant tax benefit is obtained after commencement of the new law.

In accordance with the adopted draft, the new regulations are scheduled to become effective 30 days after their publication in the Journal of Laws.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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