

REFUND OF FOREIGN TAX SUBJECT TO POLISH CIT

We wish to alert you to taxpayer-unfriendly tax rulings made by Director of Katowice Tax Chamber on 30 December 2015 (ref. IBPB-1-2/4510-625/15/JW and IBPB-1-2/4510-624/15/BD). According to these rulings, a refund of foreign income tax does not qualify as income from participation in corporate profits and as such cannot be exempted from Polish income tax under Article 20.3 CIT Act.

The case involved a company which had become a shareholder in several Maltese companies. According to Maltese law, some of the tax paid on income of a Maltese company may, in certain situations, be refunded to its shareholders. The Polish company claimed that such a refund of Maltese tax can, for Polish purposes, be treated as "income from participation in corporate profits, other than dividend" and as such exempted from Polish CIT alongside dividends, subject certain conditions (see Article 20.3 CIT Act).

The tax authority was of a different view and held that the money received by a Polish shareholder by way of a refund of tax from his Maltese company cannot be considered income from participation in corporate profits. The authority explained that the profit meant in the CIT Act is not "gross" profit but net profit, i.e. profit after income tax. The term "profit", therefore, does not include income tax, hence a refund of such tax cannot be interpreted as income from participation in corporate profits. In consequence, the refund of Maltese tax will qualify as taxable income under Article 12.1 CIT Act.

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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