

PLANS TO AMEND CIT ACT REGULATIONS ON TAX GROUPS

We have been recently breaking news of a series of proposed amendments to the Corporate Income Tax Act (CIT Act).

This is to alert you to another one, this time in relation to tax groups.

There is a proposal to introduce a number of changes to the related framework, including the following:

1. Reduce the average share capital threshold for registration as a tax group from PLN 1 million to PLN 0.5 million.
2. Reduce the direct shareholding requirement from 95% to 75%.
3. Reduce the profitability requirement from 3% to 2%.
4. Reduce the time to submit the tax group agreement to tax authorities: the new deadline would be 45 days before tax year.
5. Prohibit group companies from using special economic zone relief (exemption from CIT for companies doing business in special economic zones).
6. Prohibit removing from the tax group any company that is its member.

The new law would also introduce a **more restrictive treatment** of changes (whether in the factual or legal position of the group) that translate to a breach of tax group requirements.

Importantly, when such requirements are broken, the group will lose its taxpayer status **retroactively**, i.e. from the date of its registration, rather than from the date of the breach (as is the case now).

Accordingly, if the group loses the taxpayer status, its member companies will have to settle CIT for the entire period ever since the group's registration as a single taxpayer.

Any tax paid by the tax group as such will be treated as payment on account of tax due from each of its member companies pro rata to its net income.

In such a situation, there is a risk that tax default interest may have to be additionally paid for all the time since registration of the tax group as such.

This retrospective approach to loss of taxpayer status for tax groups will exceptionally not apply where the tax group does not pass the minimum profitability threshold of 2%.

The changes are expected to enter into force on 1 January 2018.

We will keep you posted on the progress of this legislation.

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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