FURTHER CHANGES TO CIT ACT AS OF 1 JAN 2018

We wish to alert you to the latest version of the proposal to amend the income tax acts ("Proposal"), published on October 2.

Below are some of the recent changes to the Proposal in relation to the key amendment areas scheduled to become effective in 2018 for corporate income tax ("CIT"):

1) thin capitalisation (30% of "tax EBITDA")
   - annual "safe harbour" amount (cap up to which interest is fully deductible from revenue) increased from PLN 120K to PLN 3M;
   - borrowing costs undeducted in a tax year can be carried forward over 5 years;
   - more elaborate rules on the computation of non-deductible interest;
2) limits on deductibility of costs of using intangibles or intangible services (5% of "tax EBITDA")
   - in relation to intangible services, the rules will apply only to purchases from affiliates or entities based in tax havens;
   - accounting services, legal services and personnel acquisition and recruitment services excluded from the list of items with limited deductibility;
   - costs associated with transfer of loan debtor's insolvency risk added to the list of items with limited deductibility;
   - "safe harbour" amount (cap up to which these items may be fully deducted) increased from PLN 1.2M to PLN 3;
   - more elaborate rules on the computation of non-deductible costs;
3) minimum income tax on commercial property
   - rate lowered from 0.042% to 0.035%,
   - not applicable to tangibles which are no longer depreciated and to office buildings used solely or principally for taxpayer's own purposes;
4) tax groups
   - a new provision to the effect that if a tax group loses its taxpayer status, the member companies must generally account for CIT for the period starting with the second tax year before the date on which the group lost its taxpayer status (instead of having to do so for the entire time since registration of the group, as initially envisaged);

Other news:

- The lawmakers decided to abandon the idea that indirect costs should become deductible for tax purposes when they are recognised as accounting expenses.
- The list of non-deductible items was expanded to include borrowing costs (e.g.

interest, commissions, charges) where the economic burden of the costs is shifted to the acquired company as a result of restructuring (e.g. merger, takeover), i.e. in a debt push-down scenario.

The Proposal, which provides that the changes will take effect as of 1 January 2018, has been formally tabled for consideration by the Cabinet.

Note also that there is a proposal to amend the VAT Act and certain other acts in a way that will materially affect the deductibility of various costs for income tax purposes.

Plans are in place to introduce a regulation excluding the tax-deductibility of a cost item to the extent its payment above PLN 15,000 is made otherwise than through a payment account listed in the register of non-exempt taxable persons.

The law introducing those changes is expected to become effective 6 months after publication.

We will keep you up-to-date on the progress of this legislation.

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