

**WITHHOLDING TAX APPLIES WHEREVER YOU EXECUTED YOUR CONTRACT
OR MADE YOUR SUPPLY**

We wish to alert you to the new legislative proposal adopted by the Sejm to amend the Corporate Income Tax (CIT) Act and the Personal Income Tax (PIT) Act. According to the proposed new law, there would be an open-ended list of non-residents' income sources which are taxable in Poland (the list will be introduced into the CIT Act and elaborated upon in the PIT Act).

Non-residents' Polish-source income will include, among other items, also amounts due which are settled (including by making them available, paying them or setting them off) by Polish entities, regardless of where the contract has been executed or the supply made.

In practice, a Polish entity which acquires any of the intangible services specified in the CIT Act or the PIT Act (advisory, accounting, market research, management or similar services) from a foreign entity will have to withhold tax on the payment made to the foreign entity even if the underlying contract has been signed and performed abroad.

Currently, without the relevant definition in the CIT Act and given the imprecise definition in the PIT Act, the term *Polish-source income* has been construed in two ways by Polish courts dealing with withholding tax on the statutorily listed services provided by foreign suppliers to Polish customers:

- The first line of authority says that non-residents providing these services to Polish customers will have the limited tax liability only if the service has been physically performed in Poland.
- According to the other line of authority, the conclusive factor in determining whether non-resident's income is Polish-based in such cases is whether the consideration has been paid by the Polish customer or the outcome of the service will be used in Poland.

The proponents of the new law write that it is designed to provide for a tighter income tax system by adding precision to the existing regulations.

According to the draft, the new law would become effective on 1 January 2017.

The bill has been sent to the Public Finance Committee. We will keep you up-to-date on the legislative developments in this area.

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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