

PROPOSED AMENDMENTS TO CIT ACT MARK A TOTAL CHANGE IN THIN CAPITALIZATION REGULATIONS

As you may know (see our previous newsletters), the government are planning to amend the CIT Act.

Some key change involve the implementation of the ATAD regulations that seek to curb excessive debt financing.

The new law would totally abolish the existing framework as well as doing away with association between undertakings as a requirement for the application of interest deductibility limits.

The new thin capitalization framework would cover all forms of debt financing.

In accordance with the new law, the limit on tax deductibility of borrowing costs equals exceeding borrowing costs times 30% EBITDA, where:

- **EBITDA** = income included in taxable base, plus depreciation deductible during the tax year on tangibles referred to in Article 16a – 16m CIT Act, plus net borrowing revenue (revenue less costs).
- **Borrowing costs** = any kind of expenses associated with the raising or using finance from other parties, including unrelated parties, such as interest (including capitalised interest), fees, commissions, premia, the finance cost element of lease payments, finance charges and other penalties for payment delays, and hedging expenses (including costs of derivatives), for whoever they may be incurred.

The new law will not apply to taxpayers whose exceeding borrowing costs during the tax year are up to PLN 120,000 and to "financial undertakings".

According to unofficial news from the Ministry of Development and Finance, there are plans to increase the above threshold to PLN 1.2 million.

Borrowing costs that were not deductible in one tax year may be deducted in subsequent tax years

The new law will apply also to non-residents with permanent establishments in Poland.

The proposed commencement date is 1 Jan 2018. Under transitional provisions, the old law will continue to apply until the end of 2018 to a loan (credit facility) the amount which has been physically disbursed to the taxpayer before 31 Dec 2017.

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

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