10 MOST IMPORTANT TAX CHANGES IN POLAND IN 2019
Dear Enterprise Owners,

2019 will bring significant changes in tax law. To show you the scope and diversity of the changes, we discuss the ten most important ones which will affect businesses, or those which, if not complied with, may put you at risk of particularly severe consequences and additional obligations.

With these changes the lawmakers want to tighten up the tax system but they also introduce new tax reliefs. In addition to basic information on particular regulations, this brochure discusses their ramifications.

We discuss, among other things, issues related to reporting tax avoidance solutions, tax reliefs for enterprises, changes in accounting for: transfer pricing, company car expenses, tax-deductible costs, withholding tax on dividends and royalties. We compare the new regulations with the old ones and illustrate them with examples.

This brochure presents in an accessible way changes which the lawmakers will or plan to introduce in 2019. If you are interested in further details, please contact our experts in Cracow, Gdansk, Gliwice, Poznan, Warsaw and Wroclaw.

Rödl & Partner
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MANDATORY DISCLOSURE RULES

IN BRIEF

Mandatory Disclosure Rules (MDR) apply above all to those who develop tax planning schemes and make them available to or support enterprises in their implementation (e.g. tax advisers, attorneys-at-law, employees of financial institutions). The MDR apply to both cross-border and domestic transactions.

IN DETAIL

The MDR apply to tax planning schemes which may suggest an attempt to evade taxation, e.g.
- acquisition of a loss-making enterprise to use the losses to reduce tax liabilities,
- using tax credits or tax reliefs for the same transaction in at least two countries,
- reclassification of income/revenue which actually leads to tax reduction, exemption or exclusion.

ENTITIES OBLIGED TO REPORT:
- promoter (e.g. tax adviser, attorney-at-law, legal adviser),
- user (an entity to which a tax scheme is provided, which implements the scheme or which is ready to implement the scheme, or which has taken steps aimed at implementing the scheme).

CONSEQUENCES FOR TAXABLE PERSONS

Under the amended legislation taxable persons are obliged to report to tax authorities important information on the planned business operations (e.g. identification data of the taxable person and the person preparing a tax planning scheme, EU Member States which may be involved in the scheme, a detailed description of arrangements, the intended purpose of the scheme).

Furthermore, the mandatory disclosure violates the professional privilege – the promoter who has not been released from the privilege must inform the user about his obligation to make the disclosure to the Head of the National Tax Administration (NTA) and, at the same time, inform the Head of the NTA that there is an entity subject to MDR.

REMEMBER

The MDR apply to arrangements in which the first transaction was effected after 25 June 2018.

EXPERT’S OPINION

The basic hallmark which determines the disclosure obligation is the main benefit criterion. It is considered fulfilled if the facts and circumstances indicate that an entity acting reasonably and driven by legitimate goals other than gaining financial benefits could have reasonably selected a different course of action which would not have brought tax benefits to the entity.

With such a general definition of the main benefit criterion each transaction that will reduce the taxable base despite being lawful will be reportable (e.g. a transformation of a limited liability company into a limited partnership – an attempt to separate an organised part of the enterprise before the disposal of assets).
IN BRIEF

The changes to be effective from the beginning of 2019 establish the rules of tax-deductibility of the costs of purchase and use of cars and, additionally, in the case of company cars used for mixed purposes – adapt the regulations as much as possible to the current VAT Act.

IN DETAIL

The lawmakers have developed separate regulations for cars included in company’s assets in the meaning of tax laws and used:
- only for business purposes,
- for „mixed” purposes,
as well as for private cars used also for business purposes.

New restrictions on tax-deductibility of car running expenses:
- cars included in tangible assets and used for business purposes only:
  - 100% of car running costs are tax-deductible.
  - 100% of car running costs are tax-deductible and
  - obligatory mileage logbook, like for VAT purposes.

- cars included in company’s assets and used for mixed purposes:
  - 100% of car running costs are tax-deductible.
  - 75% of car running costs are tax-deductible (mind the VAT*).

- cars owned by the taxable person and not included in tangible assets, but used for taxable person’s business purposes:
  - Within the limit under the mileage logbook: the product of the actual number of kilometres driven for business and the rate for 1 km.
  - Vehicle mileage logbook obligatory.
  - 20% of car running costs, including the insurance premium, are tax-deductible (mind the VAT*).
  - Vehicle mileage logbook not obligatory.

*the limits are inclusive of VAT which pursuant to Article 86af(1) VAT Act is not input tax, and input VAT in the part in which the taxable person is not entitled to reduce VAT or to obtain the refund of the difference in VAT.

REMEMBER

Your choice of the intended car use in business triggers consequences under income tax legislation and the VAT Act.
**COMPANY CARS – EXPENSE ACCOUNTING**

- with regard to tax-deductibility of fees under lease, rental or similar agreements – regardless of the purpose for which the car is used:

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<tr>
<td>Currently the lease instalment is tax-deductible in full (with the exception of financial lease instalment).</td>
<td>Lease instalments are tax-deductible in the amount not exceeding their portion calculated pro rata to the proportion between PLN 150,000 and the value of the leased car (mind the VAT*). In case of electric cars the limit is PLN 225,000. Lease agreements concluded before the amended laws entered into force – option to follow the current laws.</td>
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- with regard to the increase in the tax-deductible amount of depreciation charges of cars included in assets:

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<tr>
<td>In the part calculated from the car value, not exceeding: - EUR 30,000 – for electric cars, - EUR 20,000 – other</td>
<td>In the part calculated from the car value, not exceeding: - PLN 225,000 – for electric cars, - PLN 150,000 - other</td>
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- with regard to the increase in the tax-deductible amount of car insurance premiums:

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<tr>
<td>Car insurance premiums in the amount not exceeding their part calculated pro rata to the proportion between EUR 20,000 and the car value taken for insurance purposes.</td>
<td>Car insurance premiums in the amount not exceeding the part calculated in the proportion between PLN 150,000 and the car value taken for insurance purposes.</td>
</tr>
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*the limits are inclusive of VAT which pursuant to Article 86a(f) VAT Act is not input tax, and input VAT in the part in which the taxable person is not entitled to reduce VAT or to obtain the refund of the difference in VAT.

**EXPERT’S OPINION**

The changes will significantly increase the tax burden – they will limit the tax-deductibility of car use expenses.
**INNOVATION BOX**
- **TAX RELIEF FOR INNOVATIONS**

**IN BRIEF**

*Innovation Box* (also known as Patent Box, Intellectual Property Box or IP Box) is meant to be a tax incentive for Polish and foreign enterprises to carry out R&D work in Poland and commercialise its results. Starting from January 2019, income generated from innovative and patented solutions created, developed or improved by enterprises are taxable at a preferential rate of 5% (instead of 19%).

**IN DETAIL**

*Innovation Box* will be available both to natural persons and legal persons that develop and commercialise so-called eligible intellectual property rights (patents, utility models, industrial designs and software) which are protected by the applicable domestic or international laws.

The income taxable at the preferential rate of 5% will be determined as a product of the income earned from the eligible intellectual property right in the fiscal year and the Nexus mathematical rate.

Income earned from the eligible intellectual property right means income earned from:

1. fees and charges under the licence agreement,
2. the sale of the eligible intellectual property right,
3. the eligible intellectual property right included in the selling price of the product or service,
4. compensation for the violation of rights arising from the eligible intellectual property right.

**EXPERT’S OPINION**

*Innovation Box* is a great complement to the existing tool, i.e. the R&D relief. The former tool (IP Box) deals with the revenue, whereas the latter tool – with the costs, which after joining the two together may turn out to be the solution for promoting and supporting innovation in Poland.

**REMEMBER**

To be eligible for the relief, the taxable person must meet two conditions:

1. carry out R&D activity directly related to creating, commercialising, developing or improving an asset in the form of intellectual property right, and
2. keep accounting records separated so that it is possible to calculate the taxable base.

*Innovation Box* will be cleared in the annual PIT or CIT return and the taxable person will be entitled to apply the relief throughout the intellectual property right’s protection period.

**NOW**

An R&D tax relief has been available in Poland since 2016. It allows deducting tax-deductible costs incurred for R&D work from the taxable base (which, in simplified terms, is income). Under the R&D relief the enterprise obtains support only at the stage of development of the new solutions.

**SOON**

Starting from 2019, two reliefs will be available in Poland to support innovative activity: the R&D relief (on the existing terms and conditions) and Innovation Box which enterprises will use at the stage of taxation of the income derived from the commercialisation of the new solutions. Innovation Box complements the R&D relief.
EXPERT'S OPINION

After the introduction of exit tax to the Polish tax system, any plan to move an asset outside the country will require an additional economic analysis. This new legal reality will also affect tax planning before starting a business activity.
WITHHOLDING TAX ON DIVIDENDS AND ROYALTIES AND COPIES OF CERTIFICATES OF RESIDENCE

IN BRIEF

If a foreign taxable person wants to enjoy preferential tax rates under the relevant tax treaty, he has to present his certificate of residence to the Polish business partner. Until the end of 2018 the original certificate was required. Starting from 2019, it will be possible to enjoy the preferential tax rates under tax treaties on the basis of a copy of the certificate of residence.

IN DETAIL

Nonetheless, such an option will be significantly limited and will be available only with reference to fees for the following services: consultancy, bookkeeping, market research, legal services, advertising, management and control, data processing, recruitment of employees and personnel acquisition, guarantees and warranties, and other services of similar nature.

The usability of the copy of the certificate will also be limited – it will be accepted if the following two conditions are met jointly:

- the total payments to the same entity does not exceed PLN 10,000 per calendar year,
- information following from the copy of the certificate of residence does not raise reasonable doubts as to its accuracy.

A Polish entity which pays interest, royalties and fees for intangible services to a non-resident must deduct the withholding tax and pay it to the tax office.

Pursuant to the PIT and CIT Acts, this applies in particular to:

- royalties in the form of copyrights, industrial property rights and know-how,
- fees for performing arts, entertainment or sports activities,
- fees for the following services: consultancy, bookkeeping, market research, legal services, advertising, management and control, data processing, recruitment of employees and personnel acquisition, guarantees and warranties and other services of similar nature.

The rules for taxation of royalties vary by tax treaties. Examples of the variations:

- a maximum tax rate which the contracting state can apply to royalties paid to the residents of the other contracting state,
- a definition of royalties which is different from that in the domestic law. In the tax treaties to which Poland is a party the definitions of royalties are narrower than in the domestic law.

REMEMBER

The PLN 10,000 limit up to which a copy of the certificate of residence is acceptable is about the payments made in the fiscal year to the same entity.

EXPERT’S OPINION

The acceptability of copies of the certificate of residence is a step in the right direction. However, due to the threshold amount (and, in particular, the obligation to calculate the aggregate amount of the fees in a fiscal year) many taxable persons will still have to obtain the original certificates of residence from their customers.
The amended CIT Act changes the rules of charging the withholding tax on dividends, interest, royalties and fees for certain types of intangible services. It applies to withholding agents who make the above payments to the same taxable person to the total higher than PLN 2 million in a fiscal year. After exceeding that limit, the withholding agents will be generally obliged to deduct withholding tax at the rate specified in the CIT Act.

This means that after exceeding the PLN 2 million threshold, withholding agents will no longer be entitled to the withholding tax exemptions and the preferential rates provided for in tax treaties. However, the demise of the above-mentioned preferential treatment will not be absolute – to maintain the exemption (or the right to apply preferential tax rates specified in the tax treaty, as the case may be):

- the withholding agent will have to perform an additional verification to confirm eligibility for the exemption or the preferential rates, and file the relevant statement to the head of the tax office,

- it will be necessary to obtain a confirmation that the withholding agent is exempt from deducting flat income tax (the relevant application can be submitted by the withholding agent or by the taxable person; the fee for the confirmation is PLN 2,000).

If the tax is charged on the excess over PLN 2 million, the withholding agent or the taxable person will have the right to apply for its refund. The decision on the refund will be preceded by evidence proceedings. The tax should be refunded without undue delay, no later than within 6 months of receiving the application for tax refund. That deadline can be extended if it is necessary to examine the grounds for the refund.

The changes concerning the withholding tax should definitely be considered negative as they impose additional obligations on enterprises.
IN BRIEF

Changes in transfer pricing starting from 2019:
- reduce the documentation obligations,
- extend deadlines,
- introduce additional simplifications and documentation exemptions.

The most important changes:
1. Standardised terms and definitions:
   - the laws currently in force repealed and new chapters regulating transfer pricing issues introduced to the PIT and CIT Acts.
2. Documentation requirements harmonised with OECD standards.
3. Less obligations:
   - documentation thresholds increased to PLN 10 million (for transactions on goods and for financial transactions) and to PLN 2 million (for services and other transactions),
   - Master File documentation threshold increased to PLN 200 million (consolidated revenues for Master File documentation purposes),
   - obligation to prepare the Master File limited to entities subject to full or proportional consolidation,
   - the Master File prepared by another entity is acceptable (provided that it complies with Polish law). English version of the Master File will also be accepted. However, tax authorities may request a Polish version within 30 days,
   - CIT/TP summary report replaced with transfer pricing report in electronic form (TP-R form), which is generally supposed to be easier and more intuitive.
4. Additional exemptions from the documentation obligation for certain transactions.
5. New rules of accounting for certain transactions:
   - the arm's length principle revised,
   - special rules for low value-added services,
   - special rules for loans,
   - option to apply, in justified cases, other price calculation methods than those provided in the act,
   - transfer pricing adjustments possible.
6. New deadlines:
   - the deadline for submitting a statement saying that the transfer pricing documentation has been prepared and information on transfer pricing extended from 3 to 9 months after the fiscal year-end,
   - the deadline for preparing the Master File extended to 12 months after the year-end.

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<td>Benchmarking study to be prepared only by entities with revenues or expenses exceeding EUR 10 million</td>
<td>Benchmarking study will be an obligatory component of the Local File.</td>
</tr>
<tr>
<td>Transfer pricing documentation to be prepared by entities with revenues or expenses exceeding EUR 2 million</td>
<td>Documentation obligation will depend on exceeding the new thresholds.</td>
</tr>
<tr>
<td>Three-tiered transfer pricing documentation (Local File, benchmarking study, Master File)</td>
<td>Two-tiered transfer pricing documentation (Local File, Master File)</td>
</tr>
<tr>
<td>Obligation to submit a statement saying that the transfer pricing documentation has been prepared</td>
<td>Obligation to submit a statement saying that the transfer pricing documentation has been prepared and that the terms and conditions of the controlled transactions are at arm's length</td>
</tr>
<tr>
<td>CIT/TP report submitted by entities with revenues or expenses exceeding EUR 10 million</td>
<td>Information on transfer pricing submitted in electronic form by every entity obliged to prepare transfer pricing documentation</td>
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REMEMBER

The new regulations enter into force on 1 January 2019 and will be applicable to transactions concluded from the beginning of 2019. As regards transactions made in 2018, taxable persons will need to prepare the related documentation until the end of September 2019, in accordance with the old regulations.

EXPERT’S OPINION

By introducing the proposed changes the lawmakers want to reduce the number of entities obliged to prepare the documentation and to reduce the number of controlled transactions.

With the extended deadlines for preparing the documentation, taxable persons will manage their transfer pricing obligations more effectively.
SIMPLIFIED TAX RECORDS TO BE KEPT BY PERMANENT ESTABLISHMENTS OF NON-RESIDENTS

IN BRIEF

The lawmakers have decided to give the Minister of Finance in the CIT Act the right to determine, by way of a regulation, the extent of records to be kept by permanent establishments of non-residents operating in Poland. There are no implementing regulations yet but the draft act stipulates that the records should follow the simplified model.

IN DETAIL

The new rules will apply to the taxable persons who have permanent establishments in Poland and do not open branch offices or representative offices in Poland to pursue a business activity. Under the right given to him in the act, the minister competent for public finance will determine the method of keeping the simplified records and the requirements that they should meet to enable correct calculation of the due tax.

REMEMBER

The lawmakers have not prepared the implementing regulations to the discussed provision yet. As soon as the finance minister defines the relevant requirements in a regulation, we recommend reviewing your records kept so far and adjusting them to the requirements.

EXPERT’S OPINION

The new rules under which permanent establishments can keep simplified records seem good. They will help clear many doubts about how to document the revenues and expenses of permanent establishments. At the same time, the new rules confirm that a taxable person who operates through a permanent establishment is not obliged to keep comprehensive books of account according to the Accounting Act. Nonetheless, an unambiguous assessment of the amended laws will be possible only after reviewing the implementing regulations, which are not ready yet.
IN BRIEF
A company will have the right to deduct notional interest rate which it would include in tax-deductible expenses if it procured financing from outside. The new concept in CIT is supposed to act as an incentive for taxable persons to retain the capital in the company for its development.

IN DETAIL
The Ministry of Finance believes that this change evens out the tax incentives related to external financing with creating self-financing capital. The lawmakers assume that the adjustment will be full up to the amount of retained earnings/made contributions on which the notional interest (calculated at the reference rate of the National Bank of Poland increased by 1 percentage point) does not exceed PLN 250,000.

REMEMBER
The lawmakers want the new regulations on tax-deductibility of notional interest on retained earnings or on contributions made to apply for the first time to the fiscal year commencing after 1 January 2020. However, it will also be possible to apply this solution to the profit appropriated to capital reserves or to contributions made to the company after 31 December 2018, provided that the money is considered to be appropriated and the contributions made in the fiscal year commencing after 31 December 2019.

EXPERT’S OPINION
The proposed changes are favourable to taxable persons. Due to the limit introduced in January 2018, which restricts the tax-deductibility of debt financing costs, enterprises find loans less and less attractive.

The option to deduct notional interest should be considered in conjunction with the last year’s restriction on the tax deductibility of debt financing costs – the legislators limit the benefits of external financing and, at the same time, promote self-financing derived from additional contributions or retained earnings.
IN BRIEF

Due to the lack of relevant regulations, the income of persons trading in cryptocurrencies could be taxed at as much as 32%. Therefore, businesses from this sector have moved their operations abroad. Starting from January 2019, revenues from trading in virtual currencies will be classified as capital gains (under PIT and CIT Acts). Generally, the income earned from the sale of virtual currencies will be taxable at 19%.

IN DETAIL

In the opinion of tax authorities, revenue from the sale of virtual currency is revenue from property rights so in the case of a sales contract or an exchange agreement 1% transfer tax is payable.

From 13 July 2018 to 30 June 2019 transfer tax will not be collected from taxable persons who purchase or exchange cryptocurrencies.

The new regulations apply to legal and natural persons who sell virtual currency (cryptocurrency) – exchange virtual currency for a legal tender, merchandise, service or property right other than virtual currency or pay for other liabilities with virtual currency.

The following documented costs and expenses will be tax-deductible costs of selling virtual currency:
- expenses incurred directly to purchase virtual currency, and
- costs of sale of virtual currency.

**NOW** | **SOON**
---|---
Taxed like income from property rights:
- according to tax brackets (18% and 32%) – most PIT taxable persons,
- at 19% – CIT taxable persons, PIT taxable persons using linear tax.
Loss on cryptocurrency can be set off against income from other business activity.

Taxed as:
- capital gains (PIT) at 19%,
- capital gains (CIT) at 19% or at a preferential rate of 15% (it may be reduced to 9% from 2019).
Loss cannot be set off against income from other business activity.

UNCHANGED | CHANGED
---|---
Taxable income from the sale of virtual currency. | revenue source,
- tax rate,
- option to set off the loss.

REMEMBER

Transfer tax exemption applies until 30 June 2019.

EXPERT’S OPINION

The introduction of laws regulating the taxation of cryptocurrencies should be assessed as positive because it clears out the doubts in this area.
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9% CIT RATE

IN BRIEF

Starting from January 2019, the current preferential CIT rate of 15% will be reduced to 9%.

IN DETAIL

The lower rate applies to revenue other than capital gains, that is to profits on operating activities.

Although the tax rate has been reduced, eventually the lawmakers have not increased the sales revenue limit for small taxpayers to EUR 2 million like they originally planned. Furthermore, the revenue amount taxable at 9% CIT rate in the tax year has been limited to EUR 1.2 million. Once that limit is exceeded, the basic 19% rate of tax must be applied. As a result, ultimately the entire revenue (income) earned in the tax year will be taxable at 19% CIT rate.

The 9% tax rate will be available to small taxpayers meaning those whose sales revenues (including the VAT amount) did not exceed EUR 1.2 million in the preceding tax year. This means that in 2019 a limit of PLN 5.135 million will apply to revenue earned in 2018. From 1 January 2020, the limit will be increased to EUR 2 million.

A taxable person starting his business may also apply the 9% CIT rate in his first tax year.

Groups of companies may only use the basic 19% rate. The restriction applies also to entities which have undergone restructuring processes described in detail in the CIT Act. The exception is the year of the restructuring and the year after that.

At the same time, please note that the 9% CIT rate applies to income of up to the PLN equivalent of EUR 1.2 million, earned in a given tax year. Starting from the month (quarter) after exceeding that limit, the tax should be charged and paid at 19% CIT rate. The difference in the tax will be payable after the end of the tax year.

REMEMBER

Small taxpayers or start-ups may apply the reduced CIT rate of 9% until the month (quarter) of the tax year in which their sales revenue exceed the limit of EUR 1.2 million (equivalent in PLN). Once that limit is exceeded, the CIT advance is payable at 19%.

EXPERT’S OPINION

The reduced rate will still apply to relatively small number of businesses – the rules of taxation for individuals running small businesses will remain unchanged, and it is them who make the majority of small taxpayers.
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