

Transfer Pricing Alert

July 2022



Proposed amendments to regulations on haven transactions

On June 28, the Polish Ministry of Finance published the announced draft act amending the Corporate Income Tax Act and certain other laws, including, among other things, proposed amendments to the regulations on documentation requirements for haven transactions.

The proposed changes look as follows:

Increasing the documentation threshold	<p>According to the announcement, there are plans to impose documentation obligations on taxpayers carrying out controlled and non-controlled transactions by setting new documentation thresholds for transactions:</p> <ul style="list-style-type: none">■ direct – by doubling the threshold from PLN 100,000 to PLN 200,000,■ indirect – splitting the thresholds into:<ul style="list-style-type: none">• PLN 2,500,000 – with respect to financial transactions,• PLN 2,500,000 – with respect to commodity transactions,• PLN 500,000 – with respect to other transactions.
Beneficial owner of receivables	<p>The draft clarifies that in the case of indirect haven transactions, the regulations apply to the beneficial owner of the receivables under the transaction. This means that the obligation to examine the transaction for the beneficial owner in the tax haven or of the accounts related to the receivable received from the tax haven applies only to the entity receiving the receivable.</p>
Domestic transactions	<p>It was clarified that in the case of domestic transactions (where the payer and recipient of the receivable are subject to domestic jurisdiction) – the documentation obligation for indirect haven transactions will be borne solely by the entity receiving the receivable.</p> <p>It was indicated that this entity has adequate knowledge of whether it is the beneficial owner of the receivable, or – if it forwards the receivable – it has knowledge of what entity is the beneficial owner of the receivable.</p>
No presumption of residency of the beneficial owner in a tax haven	<p>Current regulations on documenting indirect haven transactions provide for a presumption of residency of the beneficial owner in a tax haven if the other party to the transaction settles with a haven entity during the tax year or fiscal year.</p> <p>The draft proposes to move away from the presumption in favor of excluding the application of the obligation provided for in proposed Article 11o Section 1(2) of the CIT Law in certain cases.</p> <p>It was proposed to exclude the application of these provisions if the entity receiving the receivable resulting from a controlled transaction or a transaction other than a controlled transaction:</p> <ul style="list-style-type: none">■ does not settle the receivables with a tax haven entity during the tax year or fiscal year■ is not affiliated with a tax haven entity. <p>Fulfilling the prerequisites for this exemption will be recognized e.g. if they are proven by a statement of the entity receiving the receivable (unless the taxpayer or the non-corporate company knew or could have known that the content of the statement is not true).</p>

Easier identification of the beneficial owner	For the purpose of verifying the documentation obligation, it will be considered sufficient to have a statement from the entity receiving the receivable stating whether the entity is the beneficial owner of the receivable and, if not, whether the beneficial owner is not a tax haven entity.
No obligation to document certain transactions	In addition, it was indicated that the following is to apply to the discussed provisions: Article 11n (2), (3) and (5–9) of the CIT Act regarding controlled transactions not covered by the documentation obligation, i.e.: <ul style="list-style-type: none"> ■ those covered by an APA or tax agreement for the period to which such agreement relates, ■ those whose value does not permanently constitute income or tax deductible cost, except for financial, capital, investment, fixed asset transactions or intangible and legal value transactions, ■ those where the relations result exclusively from the relation with the State Treasury or local government units or their associations, ■ those, where the price was set by open tender.
Entry into force	As per the draft, the proposed amendments have the date of entry into force on January 1, 2023.
Transitional provisions	At the same time, the draft proposes a transitional provision that would give retroactive application of the new solutions, to transactions: <ul style="list-style-type: none"> ■ started and not completed before January 1, 2021, and ■ started after December 31, 2020.
Status of the draft act	As of the date of publication of this alert, the draft has been submitted for consultation, so the proposed amendments are still subject to change.
	This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland experts.
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